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WITHDRAWN

The Citadel of Freedom

A Brief Study of the Constitution and Its Builders, and of the Movement to Destroy It

By

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OF LOS ANGELES

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Our clocks strike when there is a change from hour to hour; but no hammer in the horologe of Time peals through the Universe when there is a change from Era to Era. Men understand not what is in their own hands; as calmness is the characteristic of strength, so the weightiest cause may be the most silent.—CARLYLE.

PREFACE

THIS book puts the acid test of operating efficiency to the Initiative and Referendum. It raises the blunt question: CAN DIRECT GOVERNMENT DIRECT?

In it I show that the Constitution provided for a four-phase government, based on an equilibrium between the people and the three operative branches of their government. I develop in detail the fact that ours is a representative government and that, as such, it has won world leadership. I also show that, as a result of the Civil War and the emergence of the "Solid South," a political stalemate set in, bringing on, after several decades, a reaction in the form of movement for one-phase or direct government, sugar-coated as the Initiative, Referendum and Recall. I prove that direct government is contrary to the system provided for in the Constitution and, which is more important, is in violation of common sense.

Others have said the same thing, repeatedly, eloquently and in vain. Direct government has

gone right ahead until it is now operative in twenty-one of our states and is reaching out to reshape the national government.

Every test has been applied to it but the one that everybody can understand: How does it work?

That form of government is best, of course, which makes possible the most happiness to the greatest number at the lowest cost—in dollars and in limitations upon the individual. Therefore, it is not enough to charge direct government with being a repudiation of our original system, or a "dangerous experiment." A valid indictment can only be framed against that or any other form of government on the ground that it is a menace to the welfare of the individual and is an unnecessary drain on his pocketbook.

That is precisely the crux of this book. On the financial side it shows that the per capita cost of operating and the per capita debts in the direct government, as contrasted with the representative government states, proves in dollars and cents the inferiority of the direct system. On the strictly political side it shows that direct government is a menace to the happiness and well being of the majority, because in actual practice it results in minority rule.

Above all, it presents the Constitution not as a pack-saddle for the slave, but rather as the armor of the free.

The first eleven chapters were published serially during the Spring of 1924 in forty-odd metropolitan newspapers—including *The New York World, Chicago Daily News, St. Louis Globe-Democrat, St. Paul Pioneer-Press, San Francisco Chronicle, Philadelphia Bulletin, Spokane Spokesman-Review, Richmond Times-Dispatch, New Orleans Item* and *Louisville Courier-Journal*—as an aid to participants in the National Oratorical Contest on the Constitution. Those chapters present the Constitution as a bold experiment in representative government which made good upon a colossal scale. The story is told largely in terms of seven dynamic personalities, with particular reference to their contributions to our political development.

The last four chapters describe the nullification of the representative principle by almost half of our states—with its unmistakable increase in the tax burden and its frank eagerness to recast our entire governmental system.

RANDOLPH LEIGH.

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CHAPTER I

"WHO GOES THERE?"

A RAGGED stripling, gaunt with hunger and weary from long tramping, drops down beside the road on a spring day and falls asleep in the sunshine. He dreams that the human race has gone back centuries and that somehow in so doing it has arrived at a golden age in which men are neither driven by greed nor restrained by authority. Everything is Eden-like. The small amount of governing that is required is attended to by all of the population, which he sees as peasants, assembled under the trees and determining policies which somehow or other execute themselves.

Finally Jean Jacques Rousseau awoke, but not to the realities of life, for it was his contribution and his curse that he never saw things as they really were or as they could ever be permanently established. He did, however, contribute

to his age and to succeeding ages a spirit of adventure and of romance in government which still quickens the thought of millions of people. That youthful dream of his, taking form long afterwards in his *Social Contract,* was indeed epoch-making. He, more perhaps than any one person, is to be credited with giving the chief impetus to the French Revolution and to the long chain of political repercussions which it started. Those repercussions still fire men's imaginations and set them out to destroy not only that which is intolerable in governmental systems, but to destroy the whole fabric of government everywhere and to set up in its place a reign of rainbows and soft music and of far-off fairy-days.

Had he come a little earlier, he would have been laughed out of a hearing. Had he come much later, he would have been ignored, for some other would have supplied the catch-phrases for that particular form of reaction which the oppression of the dying French monarchy made inevitable.

Then another shaker of foundations, Jean Francois Marie Arouet, commonly called Voltaire, long-nosed, suspicious, crushingly satirical. Finding religion and government hopelessly entwined in a system for oppressing the people, he struck out at both with a fury and effectiveness

which have rarely been equaled in the history of literature.

Before he was twenty-two, he had been thrown into the Bastile for a savage satire against the government. Soon thereafter he had plied his pen so tellingly that he was forced to quit France. Then followed a period of still more relentless assaults upon the established order. Again he was imprisoned, this time for only a month, his influence having become so great that it was felt that he was more dangerous in prison that out of it—for he had a most unpleasant habit of doing his best writing behind the bars.

A stock gambler and a dealer in army contracts on a large scale, he did not neglect to take his toll of the old order while going systematically about his self-imposed task of destroying it. Rousseau might continue as a beggar for life, "leaving his rags on every bush along the principal highways of France," but Voltaire would enjoy while he ruined. He, like those born to riches, "would walk with silver slippers in the sunshine, and with applause." Furthermore, he did, becoming eventually the idol of France and the most sought-for man in the Europe of his day. He it was who taught France to question all of her institutions, including her established religion and her powerfully entrenched

monarchy. He had nothing to offer but vitriol, but he dispensed it without stint, and then sat back amid the plaudits of the multitude and watched the storm clouds of the revolution gather. On his deathbed he uttered that cynicism so typical of him: "Give my compliments to the devil, for it is he who rules the world."

Then a vastly different man, Charles de Secondat, Baron Montesquieu, born to power and position and in every way favored of the gods. Whereas Rousseau caused men to hope beyond any possibility of attainment and Voltaire made them question and distrust everything, Montesquieu invited them to look critically at the vast problem of government and to go with him in search of a philosophy of history which would not only satisfy the mind but also prove of immense practical value in that it would help men to find a way out of the labyrinth into which the tangled political situation of Europe had brought all of its inhabitants.

He was not only the first to offer the world a comprehensive philosophy of history, but brought to his work a wealth of detail and a charm of expression which made his masterpiece, *The Spirit of Laws,* at once convincing and pleasing. He toured the principal countries of Europe and made careful researches of previous

governmental experiments to secure the data used in his book. Not until he had spent twenty years in studying previous political experiments did he feel certain that he had arrived at a thorough grasp of his subject. Then he began his remarkable analysis of all forms of government, searching out the strong and weak points in each and feeling his way toward the ideal type.

America, hardly less than Europe, was influenced by these remarkable Frenchmen—Rousseau with his ultra-democratic vision, Voltaire with his consuming wrath, and Montesquieu with his plea for reason as the guide in organizing society. They filed into the convention hall in Philadelphia in 1787 just as truly as did any of the heroes of our Revolution who had gathered there to meet the difficulties of chaos following upon victory in the field. They were there despite the fact that Montesquieu had died two years before, and Rousseau and Voltaire were then in their dotage and soon to be in their graves.

Rousseau and Voltaire were especially influential at that time in America because the furies which they were calling out had not yet devastated France, the storm in that land not breaking until the form of our government had been settled and the government itself had been

put successfully into operation. In other words, all of the most alluring elements in the code of the French revolutionists were active also in America at the time of the framing of the Constitution, without the chilling influence of the Reign of Terror to break the spell of that religion of equality and fraternity and mob rule.

But still other personages walked into the Philadelphia convention before the accredited delegates arrived. There were the thousands upon thousands of shadowy, nameless persons who had through centuries worked toward freedom and order, especially in Greece, in Holland and in England. Those who had insisted that certain fundamental and age-old rights which had come down under the Saxon kings should not be lost under the force of the Norman conquest were there, holding to priceless minor principles which had in them infinite capacity for unfoldment into human betterment. There were those who had forced King John to yield and sign at Runnymede. There were those who had built little by little into the structure of English liberty until at last it had become, if not a realized dream, at least the final step on which mankind could mount to the light.

CHAPTER II

ANARCHY

BEFORE the delegates to the Constitutional Convention actually gathered, a powerful foe, anarchy, had arisen in the land. Even the most optimistic friends of freedom were dismayed at the swift and serious turn events had taken. The government set up under the loose Articles of Confederation had, in the words of one who had helped to frame it, "the right to do everything and the power to do nothing." So prevalent was the idea of giving the minimum of power to those entrusted with directing the state or national governments, that in 1786 the men who had triumphed over the first power of Europe on the field of battle seemed hopeless under the chaos of their own weak government. During the months just preceding the gathering of the convention, more than 8,000 men had been under arms to suppress open rebellions in various states.

Captain Shays, who had been a good soldier

in the Revolution, had become so disgusted with conditions in Massachusetts that he had taken the field with close to 1,500 men and had compelled the courts in many portions of the state to discontinue their sessions. In addition he was ravaging important sections and was eager for a test of strength with the troops of the state. When the engagement actually came, Shays was defeated, but not without bloodshed.

The general situation was vigorously outlined by William Grayson, in a letter to James Monroe on the eve of the convention, as follows: "What will be the result of their meeting I cannot with any certainty determine, but I hardly think much good can come of it. The weight of General Washington, as you justly observe, is very great in America, but I hardly think it sufficient to induce the people to pay money or part with power. The people of Massachusetts are about rebelling again, for the purpose of making their government more democratical. In Connecticut they have rejected the requisition for the present year very decidedly, and no man there would be elected to the office of constable if he would declare that he meant to pay a copper toward the domestic debt. In Rhode Island the cry is for good government—after they have paid their debts in depreciated paper; first de-

molish the Philistines (i.e., their creditors), then wipe out property. New Hampshire has not paid a shilling since the peace, and does not mean to pay on to all eternity. If it was attempted to tax the people for the domestic debt, five hundred Shays would rise in rebellion within a fortnight. In New York they pay because they can do it by plundering New Jersey and Connecticut. Jersey will go great lengths from motives of revenge and interest. Pennsylvania will join, provided you let the sessions of the executive of America be fixed in Philadelphia, and give her special advantages in trade to compensate for the loss of state power. I shall make no observations on the Southern states, but think they will be (from different motives) as little disposed to part with efficient power as any."

It was not uncommon for those dissatisfied with the findings of a court or the attitude of an official to form a mob or "hunting party," which stood ready to chase the offenders like rabbits through the fields. Nor did this contempt for authority stop with the state governments. The national government (if such it could still be called) had reached the point where it was impossible to even secure anything like a quorum at the meetings of Congress. It was

still fresh in the minds of all that Revolutionary soldiery, maddened by lack of pay and dearth of supplies, had mutinied and had actually run the members of congress out of Philadelphia, the seat of government, at the point of the bayonet. Only the influence of Washington, who appeared before his men and made one of the most effective speeches of his career, prevented further outrages. So hopeless had the situation become that the Congress created by the Articles of Confederation eventually dwindled away without any formal dissolution, there being at the last only the clerk and one member in attendance.

Paper money was common. The weaker the currency became, the stronger were the assurances of validity which were printed upon it. Finally the dollar fell to an actual value of 1½ cents. Eventually it cost more to print such a dollar than it was worth, and thus that evil cured itself. The distrust in many sections became so general that money disappeared altogether from use, and men fell back to barter—tobacco, whisky and salt pork being the media.

European governments which had helped to finance the Americans when they were not assured of victory, now refused to make them any loans when they were free and at the same time

unable to manage their own affairs. The gold which was in the country quickly found its way to Europe. Private and public credit were alike dead. Merchants, shipowners, shipbuilders, fishermen and large and small farmers and planters were virtually bankrupt.

Even Washington, who is generally conceded to have been the richest man in the country at that time, had been unable to secure the money required for meeting his personal obligations, much less for the normal operation of his plantations.

Various states were conducting warfare against one another, both by means of ruinous tariff barriers and by actual force of arms. Pennsylvania actually had a large army operating under Patterson in the beautiful Valley of Wyoming, where outrages were committed which outdid even the legendary depredations of the British.

From all sections the reports of alarm and discontent poured in to the supine general government and to the almost equally helpless or vicious state governments.

Washington, who of all the men of his period was not only the most revered but the most restrained in his statements, summed the situation up in letters to his friends. Those letters can

leave no doubt that the father of his country had almost despaired of it at that time although he was still (as later events showed) ready and willing to make further sacrifices for it if he thought that in so doing he could save it from itself, as he had previously saved it from its external enemies.

Writing to John Jay in 1786, he said: "What astonishing changes a few years can produce. I am told that even respectable characters, alarmed at the present chaos, speak of a monarchical form of government without horror." In the same year he wrote to William Grayson: "Our character as a nation is dwindling, and what it must come to if a change should not soon take place, our enemies have already foretold. In truth, we seem either not capable or not willing to take care of ourselves."

Again, this time to James Warren: "The Confederation seems to me to be little more than a shadow without substance and Congress a nugatory body, their ordinances being little attended to. To me it is one of the most extraordinary things in nature that we should confederate as a nation and yet be afraid to give the rulers of that nation sufficient powers to order and direct the affairs of the same. By such policy as this the wheels of government are clogged and we are

descending into the vale of confusion and darkness. Something must be done and promptly, or the fabric will fall. It is certainly tottering."

As if not content with the confusion already existing and seemingly determined to make their contempt for their own government as well known in Europe as at home, armed bands for many months conducted organized raids upon Tories. Altogether more than 100,000 of them were driven like dogs out of the country and into Canada, in absolute violation of the most solemn treaty obligations.

Great Britain retaliated by refusing to surrender certain important border fortresses which she held, thereby emphasizing the inability of the American government to keep its own pledges or to compel the British to keep theirs. The army and navy, both badly disorganized and shamefully neglected by the government to whose services they had given themselves, were reduced to a terrible plight. Whenever army or navy officers gathered, the toast was: "A hoop to the barrel; cement to the Union; an end to mob rule!"

CHAPTER III

THE CONSTITUTIONAL CONVENTION

THE Constitutional Convention began under a shadow typical of the period. An attempt had been made shortly before to hold a conference at Annapolis to find some way out of the existing chaos. The states were so despondent and impoverished that only five of them sent delegates, and all that the meeting accomplished was to issue a call for a more ambitious convention at Philadelphia. That one act, however, gives it a place in history. When the delegates actually began their deliberations in Philadelphia, the ceremonies were simple and characteristic of the men who were to put the nation upon a solid foundation. Without wasting any time in eulogies, Robert Morris, who was the financier of the Revolution and who had made tremendous sacrifices for his country, moved that Washington be selected as chairman. This meeting with unanimous approval, Washington was escorted to the chair, and the

most important gathering ever held on the American continent was soon under way.

The delegates held views ranging all the way from those of a strong monarchist to those of the most romantic devotee of the doctrines of Rousseau. They were thoroughly familiar not only with all of the different political theories then current but also with the distinguishing characteristics of the nation for which they were to formulate an adequate and lasting governmental system. They knew that if Rousseau had been told to form a government, he would have sought out the most pleasant natural surroundings for his people, and would have laid much stress on the physical environment rather than on the frame of government. They knew that if Montesquieu had been so empowered, he would have sought the most exact balance of power; and that Machiavelli would have sought the strongest Prince. They had discussed among themselves and later debated in convention the merits and defects of all the known systems in history bearing on the problem in hand. No understanding of the convention or of what it produced is possible, however, unless it is realized that they were bent upon framing a distinctive form of government to fit the needs of a people whom they believed to have

within themselves the highest potentialities, both for good and for bad. Furthermore, their chief interest was not in mere theories about government, but in those particular examples of government with which they had been dealing—the British, which they had just defeated; the government under the Articles of Confederation, upon which a process of slow, autumnal dissolution had set in; and the governments of the states, which contained strongly republican principles tinctured with practically every popular theory of the day. It is not too much to say that they went even farther and framed the new government primarily from their simple understanding of human nature as they had come to know it under foreign dominion, in successful revolt, and in the throes of anarchy.

From the very outset, there were sharp clashes of opinion on many highly important details of the proposed constitution. Before many days, however, there was a complete grasp of the really distinguishing characteristic of what was to become the American system of government. The one unmistakable feature of the proposed government, which sets it absolutely apart from anything ever before undertaken on a large scale in the history of the world, was that it was to be a genuine republic, founded upon a written

constitution. This meant that the people would entrust their government to persons elected to represent them, and would surrender the right, heretofore regarded as sacred by lovers of democracy, of instantly overriding their officials, should the voters become dissatisfied with their course. To counterbalance this bold departure from the ideas then most popular in Europe, the people were to be fortified in three ways against misgovernment at the hands of their agents. In the first place, the terms of office in the elective branches were made short enough to give an opportunity to the voters to drive unworthy officials from power before they could permanently cripple the organization. In the second, the three operative branches of the Government, executive, legislative and judicial, were to be so provided with checks and balances that they would serve to hold each other to their tasks. In the third place, the individual citizen was guaranteed certain far-reaching rights and safeguards, not to be violated by any or all operative branches of the government.

Here then was the germ of what is in reality a four-phase government—executive, legislative, judicial and the people, the relationship of all to one another set forth in a written constitution. Each phase of the government is essential to the

proper functioning of the thing as a whole. It has been said often of late, by those who would undermine our entire system of government by disturbing the balance which the Constitution created between these four factors, that the framers of the Constitution distrusted the people. In a measure that is true. But they did not stop there. They very wisely distrusted all other elements of the government and showed that fact very clearly by the care with which they fortified each governmental branch against every other branch. They were not trying to flatter the people or those who might be elected to office. Their main concern was to fortify freedom by protecting the people from tyranny at the hands of one or of many. It was not a single class that they distrusted but any and all classes in case they should be tempted to transform themselves into mobs. They saw that it would be just as fatal for the people to attempt to run the executive branch of the government as it would be to have either or both of the other operative branches do that. The people were not to direct the government, or make the laws, or interpret them. The people were first of all to give the government the validity of their approval. They were secondly to keep the machinery of freedom running smoothly by se-

lecting, at fixed intervals, the officials who were to be their agents. They were constantly to be on their vigil against any encroachment of one operative department on another or of any or all of them upon the clearly set forth and far-reaching rights of the individual, and were to correct all such encroachments by replacing, at the expiration of their terms, all elective officials who did not do their part toward maintaining the essential equilibrium.

This bold concept stood out as soon as Edmund Randolph, governor of Virginia, had finished reading his fifteen proposals, which represented the Virginia policy. It is generally believed that the actual drafting of these proposals was the work of James Madison and that they were only presented after they had received the approval of Washington, who had long been working quietly toward a firm foundation for the government.

The Virginia plan instantly created an opposition, as well as a strong following. It was pointed out that it was a complete departure from the Articles of Confederation, which made no provision for a chief executive, or for federal courts. The machinery set up by the Articles was, in fact, a government by a one-chamber legislative body. Furthermore, it was so loose

a federation of the states that it had scarcely altered the independent status of the various states.

How, then, could advocates of strong state governments support a system which not only repudiated the form of government existing under the Articles, but actually proposed to swallow up the states? This question was soon formulated by the small states, which, through Paterson of New Jersey, presented their counter proposal, known as the New Jersey plan.

In reality the small states were not pleased with the results of the languishing government then in existence. At the same time, they were almost as much afraid of being dominated by the large states as they were of being drawn into deeper chaos by the system then prevailing. They were particularly alarmed because Randolph proposed representation by population, rather than by states.

But the clash of interests did not end there. There were pronounced sectional differences to be dealt with. These went far beyond religious prejudices and varying traditions of sport in New England and Virginia. It was not simply that one section had had a penchant for hunting witches and the other for hunting foxes. There was a towering economic issue as well.

The South was agricultural and its wealth was based on the products of slave labor. The North was commercial, and while slavery then existed in most of the northern states, it was not regarded as essential or even highly desirable there. The South wished to protect its property in slaves, and the North wished to protect industry, both in the matter of taxation and in regard to tariff regulations. Both, therefore, wished to secure a maximum of representation in the new government in order to safeguard their widely differing interests.

The convention was thus actually divided in four ways: Slave-holders against those opposed to slavery; small states against large; agriculturalists against commercialists; and nationalists against those who wished to keep the state governments paramount and clamored to make them immediately responsive to the popular whim.

Three points of difference were disposed of, temporarily at least, by the three great compromises of the convention. The first compromise was in the matter of representation, it being agreed that the large states would have their way to the extent of fixing representation in the lower branch of the legislative department according to population, while the small

states were recognized by giving each state two representatives in the upper house, irrespective of population. The second was in determining the status of slaves in making the census upon which representation was to be based. One slave was to count, in this matter, as equal to three-fifths of a free person. The third fixed the year 1808 as the time beyond which the importation of slaves would not be permitted. At the same time Congress was empowered to pass a tariff act, but not to tax exports.

All three of these difficulties, while extremely serious, did not bring the principle of representative government into jeopardy in the convention and, after all, that was the vital issue before the gathering. The fourth difficulty raised that very issue. It was soon apparent, however, that after the sectional interests had been taken care of there was no substantial opposition among the delegates to the form of government which was proposed. Most of the state rights advocates had been appeased in the three compromises already arrived at, and the agreement on them resulted in the withdrawal of other proposals, which had been advanced chiefly for trading purposes.

On Sept. 17, 1787, after four months of deliberation by what was perhaps the ablest group

of men ever assembled in this country, the Constitution of the United States was completed and thirty-nine delegates signed it, Washington being the first. Only seven of the fifty-five delegates who attended the convention are known to have been opposed to the Constitution in its final form. Nine delegates who favored it were absent when the signatures were attached.

The instrument of government thus created was passed on to the state conventions by the Congress of the Articles of Confederation for their ratification or rejection, it being provided that when nine of the thirteen had ratified it, the government thus brought into being should become operative.

The Constitution showed the influence of Rousseau upon American thought, but this time in the elaborate precautions taken against its subversion by the socialistic doctrines which he had championed. Voltaire's lesson of shrewd distrust helped, no doubt, in creating the demand for checks and balances. The teachings of Montesquieu, who so clearly set forth the merits of a republican system, were a decided factor. Likewise, the influence of the republican governments already existing in the states was unmistakably present, as were countless important

elements from the Colonial period and from English common law.

But the instrument was far more than a mere harmonizing of all of the influences then at work in America. It was a clean-cut departure from the past.

Its executive had real power.

Its legislature was not only representative and composed of two chambers, but in addition those chambers served the double purpose of checking one another and the other departments while they at the same time represented the popular will in two distinct ways. The house came directly from the people every two years. The senate came from the state legislatures for six-year terms, one-third of its membership being so elected every two years. Direct election of senators, while modifying this principle, has not substantially altered it, the important element of state representation remaining to this day a valuable check upon precipitate or sectional action on the part of the national government.

The judicial system was absolutely distinctive.

The people were recognized as the source of power in the opening words of the instrument: "We, the people of the United States." They were also fortified in their individual rights in

many specific and implied provisions. Above all, they retained the right, through their representatives, to impeach officials in any department, and through the action of either Congress or state conventions to amend the Constitution itself with the approval of three-fourths of the states.

It was also provided that the states were to be guaranteed a republican form of government as members of the union.

Benjamin Franklin, then in his eighty-first year, quaintly called attention to the importance of the work done by the convention as the meeting was drawing to a close. On the back of the huge armchair occupied by the presiding officer a half-sun was emblazoned with brilliant rays in gilt.

As Washington arose from that chair, the voice of Franklin, thrilling despite his age, was heard predicting the greatness of the Republic in these characteristic words: "Mr. President, as I have been sitting here all these weeks, I have wondered whether yonder sun is rising or setting. But now I know that it is a rising sun."

CHAPTER IV

RATIFICATION

THE Constitution had been framed under rules of absolute secrecy, consequently public interest was at white heat when the document was finally signed, published and transmitted to the state conventions for their ratification or rejection.

In every state it was submitted to the most thorough investigation and to the most relentless criticism which its enemies could devise. It was debated in every community large or small, in the thirteen states. Candidates for the various state conventions and a multitude of pamphleteers added to the popular interest in the question by the manner in which they presented their conflicting views upon it.

Never in the history of this or any other nation has a governmental problem received such widespread and long-continued study. For more than nine months the Constitution was thus debated and discussed.

In many states it was taken up clause by

clause in general meetings before the delegates were chosen and then submitted to the same intensive study when the delegates themselves finally assembled. It was attacked on every conceivable ground.

Some complained that it went too far, others that it did not go far enough. Some saw in it a death-blow to the rights of the states and of their inhabitants, and others predicted that it would not amount to anything more than the Articles of Confederation had.

The most pronounced opposition, however, was on the ground that it erected a national government which would obliterate state governments.

In the midst of the opening storm of debate, Alexander Hamilton, who had not spoken frequently in the Constitutional Convention, but who saw the necessity for the creation of a government of the type provided for, conceived a work which was destined to become one of the most important publications ever undertaken in this country.

Finding that the attack upon the Constitution was both malicious and persistent, he decided to get out a series of articles which would expound the document as a whole and in detail. He communicated his plan to Washington, who ap-

proved it. He then secured the assistance of John Jay and James Madison and launched *The Federalist.*

This exposition of the new government, which continued through the autumn and into the winter in installments in the papers of New York, quickly brought the issue clearly before the people. The articles, of which Hamilton and Madison were the chief authors, put to rout the guerrilla pamphleteers and compelled a systematic discussion of the issue in its larger aspect, as well as in some kind of order. Altogether eighty-five articles appeared in this series, all signed "Publius."

After more than a century and a quarter, *The Federalist* remains one of the chief expositions of the form of government under which we live. It takes on special interest for the student of politics and of literature in that the various articles were written in the midst of bitter controversy and during a period in which the authors had no leisure to devote to niceties of phrase or thought. It is a work struck off at white heat and it has fire in it to this day. Altogether it has gone through close to fifty editions and has been translated into many languages.

Each article dealt with an important phase of the Constitution, the entire series having been

so arranged as to present a comprehensive and convincing picture of the plan as a whole. The articles played an important part in the final ratification by the New York convention and were also used with marked effect in Virginia, as well as in every other state in which there was any sustained opposition to the Constitution.

Washington showed the importance which he attached to *The Federalist* in the following letter to Hamilton shortly after New York had ratified: "When the stringent circumstances and fugitive performances which attend this crisis shall have disappeared, that work will merit the notice of posterity, because in it are candidly discussed the principles of freedom and the topics of government which will always be interesting to mankind so long as they shall be connected in civil society."

By the end of July, 1788, the requisite number of states had ratified and in the following April the government, with eleven states participating and the remaining two soon to get into line, became a functioning reality with Washington at its head.

In each state as the various conventions ratified, there had been elaborate celebrations on the part of the populace. Particularly was this the case in the large centers of population, where

the mechanics, artisans and representatives of all of the various trades and crafts were among the most enthusiastic workers for the new plan and the most vigorous celebrators of its approval.

When Massachusetts ratified, the workers of Boston and of all the neighboring communities gathered in and around Faneuil Hall and formed one of the most imposing parades of that period. Likewise the laborers in New York and Philadelphia gave similar expression to their delight in the outcome of the long contest over the question of the adoption of the Constitution.

Indeed, in both Boston and New York the insistent demand on the part of the working classes for the adoption of the Constitution had been one of the determining factors. Samuel Adams in Boston and Governor Clinton in New York found before the final vote was taken that the demand for ratification was so powerful among the laborers, as well as among business men, that it would be political suicide to stand out longer against it.

The most far-sighted men of all classes saw in the Constitution the basis for stability and justice in government and for a regime under which the rights of individuals and of minorities would be protected.

The creation of the new government immediately improved conditions in the various states. Business, which had been at a dangerously low ebb for many months, became active. Credit was obtainable, both for domestic and foreign trade. Tariff warfare and armed depredations by citizens of one state upon those of another ceased. The courts were able to function once more, and the opportunity was at hand for Marshall and his co-workers to piece together the vast fabric of American constitutional law.

Equally significant was the changed attitude on the part of Europe. Bankers there who had scorned to make loans to the old government, now made friendly advances toward the new. Before many months had passed, the confidence in the constitutional republic was so great that a group of bankers in Holland made it a loan of 2,000,000 florins on terms more favorable than those which were procurable by any European power except England. England, whose agents had for months predicted the total collapse of all government in the states, showed her understanding of the new situation by extending recognition to the young Republic.

In a short time the condition of the government was strengthened by the establishment of a national bank.

Before long all of the governmental branches were smoothly functioning and the Republic was on the way to a place of importance among the nations of the earth.

This change from the chaos of the years immediately preceding was, of course, not due merely to the brief Constitution which was at the center of the new force. It was due to the vitalizing effect of the men whose services it had enlisted. But without such a Constitution and without the mechanism which it set up, those men would not have been available and their services would not have been secured.

Washington, Hamilton, Madison, Jefferson, Marshall, Adams, Monroe, and, in fact, all of the leaders of that time had realized that the old order was dead beyond recall. They were unwilling to risk their reputations and their lives (for the point had been reached just before the gathering of the Constitutional Convention where it was no longer certain that enraged mobs would not deal violently with the officers of the helpless government) on a task which by its nature seemed hopeless. They knew that liberty had to be fortified and hedged about and made valuable by a genuine government, rooted in popular support and clearly defined in a written constitution.

The change wrought by the initiation of the new government was the measure of the confidence of the people in the worth of the Constitution, and was a promise of the future greatness of the Republic.

CHAPTER V

WASHINGTON, THE FOUNDATION

LINCOLN was invited in 1842 to make a Washington's Birthday address at Springfield. He devoted his entire speech, with the exception of the closing paragraph, to the general theme of government. Then he referred to Washington in these words: "This is the one hundred and tenth anniversary of the birthday of Washington. We are met to celebrate this day. Washington is the mightiest name of earth—long since mightiest in the cause of civil liberty. On that name no eulogy is expected. It cannot be. To add brightness to the sun or glory to the name of Washington, is alike impossible. Let none attempt it. In solemn awe pronounce the name, and in its naked, deathless splendor leave it shining on."

As a tribute that paragraph takes rank among the most fitting things ever said about the great American. On the other hand, it is precisely that attitude of admiration from afar which has in recent years made Washington more of a

myth than a man. The result has been a growing tendency to treat him as a figurehead by means of which abler but less popular men carried on the gigantic task of securing and fortifying American freedom.

He did not make half a dozen suggestions bearing on the details of the Constitution on the floor of the convention in Philadelphia. For that reason, some historians have maintained that he really had but little part in its formation and adoption. No idea could be more unfair to him.

There is significance in the fact that the two ablest executives of the Revolution, Washington and Robert Morris, were apparently noncombatants during the critical months in which the Constitution was taking shape. Morris spoke only once, and that was to nominate Washington for chairman. With that act he seemed to feel that his duties as a speaker in the gathering had been discharged. Washington, likewise, took no direct part in the discussions, save as presiding officer, never relinquishing the chair to put the weight of his personality behind any proposition which was in the balance in debate.

This did not mean that Washington and Morris were incapable of making a convincing speech. On the contrary, Morris, in Congress

during the Revolutionary period, and Washington, in addressing his soldiers and later in his utterances as chief executive, proved themselves thoroughly capable of carrying their audiences along with them.

Washington was simply convinced that the system which had been worked out, minor imperfections being allowed for, was the only one for the American people. He did not want to ram it down the throats of the delegates, however, or to make any attempt to stampede the people into clamor for its approval. He played a tremendous part in the formation of the new government, from the time he took the field against the British until he had completed his Farewell Address, yet he never flaunted his leadership before men.

As a statesman he stood ready to throw his influence publicly into the scales wherever he saw that selfish politicians actually threatened to prevent the adoption of the Constitution, unless he came to its rescue. But he was also a shrewd enough judge of human nature to know that the people must be convinced of the value of the new government, not merely stampeded into approving it.

For that reason, debate was valuable. In addition, he knew that only in the give and take of

a convention of all the states could the compromises necessary to general satisfaction with the plan be fully revealed. Therefore, he was in the background, just far enough back to avoid overshadowing the other men who were zealous for the national welfare, and just close enough up to step in with his influence in quiet fashion when it was required.

So universal was the public confidence in him, that it was admitted by all prior to the meeting of the convention in Philadelphia that without the strength of his presence the task could not be accomplished. That confidence was not based on mere exploits in the field, splendid though they had been. It was founded upon the magnificent character of the man, which all felt to be genuine and powerful. Similarly, after the Constitution was adopted, it was realized that the government could not be truly successful without his guidance at the outset.

The great concept out of which this Republic grew was Washington's, and his was the personality that made it a reality. The lawyers arranged the phrases and clauses and worked out the details of the system of checks and balances. The lovers of history furnished whatever feeble light was to be had from the past. The orators presented the matter to the con-

vention and to the people. The writers carried forward the argument in the press. All that is to be admitted, and no man would be more eager than Washington to give ungrudging credit to all of the splendid men who worked under his inspiration toward the common goal. But Washington was the seer of America, and in the larger aspect, he it was who, using all men who faced the light, won the victory for lasting freedom.

One of the favorite devices of those who would lessen confidence in our government is to insinuate that Washington, and those who surrounded him, only pretended to work for the general welfare and actually sought to set up a government which would chain down the people.

How different their motives appear upon close study!

Let it be assumed that the four men who played the most conspicuous part in the birth of the Republic were seeking to serve their own ends. How did they go about it?

Washington, who had everything to lose and nothing to gain by siding with the revolutionists, went over to their side when by staying with the British government he would have made it practically certain that the revolt would fail. He served throughout the entire struggle at his own expense, refusing to take any compensation. In

addition, he carried practically the entire burden of keeping up the enlistments and morale of his army.

Indeed, it was by sheer personality alone that he overcame the opposition of Congress and held together a force which was sufficient to eventually triumph over the enemy. In various ways, he contributed close to $300,000 of his own money in the American cause, and did it without expecting any repayment. That, too, in a time when $300,000 amounted to something.

When victory was secured, he wished to return to his home and pass his last days in contentment as a planter. Seeing that he was still needed, he again sacrificed himself. The sacrifice was genuine. It was not merely that his tremendous land holdings were depreciating while he neglected them for the public service. Washington was a Southern planter of the type not yet entirely extinct. He loved the independence, the expansiveness, the comforts of plantation life. He was pre-eminently an open-air man. The smell of freshly turned earth was the breath of life in his nostrils. He did not want to haggle with politicians or to spend his last days in reasoning with knaves or fools. He had had enough of both in his dealings with the Congress of the Revolution.

Morris, too, had close ties with England and would have been better off financially had he sided with her and helped to crush the revolt. Instead he carried practically the entire burden of financing the Revolution, and, as Washington's spokesman, extorted from Congress everything that it did on behalf of the cause which it was supposed to serve. He not only gave his time, but invested large sums from his private resources in the fight for independence.

Hamilton, from the age of seventeen until he was shot at the age of forty-seven, was almost ceaselessly in the public service, for he continued his efforts in behalf of the new government after he had retired from political life. In spite of the fact that he enjoyed the most lucrative practice in New York in his time, he was never able to recoup the financial losses which he suffered in the American cause. When he might have been making $50,000 a year or more in his law practice, he served as secretary of the treasury for $3,500 a year. Furthermore, there was little honor and glory attached to such work in those days. His chief reward at the time was a ceaseless attack upon his motives and his character.

Madison is another illustration of the type of man who would not have opposed England,

had he considered his personal gain or loss. From the time that he took part in the framing of the Virginia constitution, on through his last days, he was never (save while president) recompensed in anything like a fair proportion to the services which he rendered. He left a much smaller estate than he inherited, and that because of no lack of ability on his own part, but because of what he did for his country.

If these men and their co-workers, as has been charged, were merely interested in bettering their own condition and lowering that of the people, why did they take such a peculiar route toward their goal?

It cannot be maintained that they thought the people were becoming menacingly strong under British rule and might eventually become troublesome. At the time of the Revolution, British subjects of the lower classes were in desperate straits, and the upper classes had every advantage over them.

Since the men who founded the Republic not only stated in very plain words what they had in mind in their fight against Great Britain and on behalf of representative government, but also proved the purity of their motives by their personal sacrifices, is it not time that we gave them credit for their work?

Certainly Washington not only made financial sacrifices for, but gave expression to his ideal of organized and buttressed liberty. Long before he had attained victory in the field, he began formulating his plan and giving hints of it to those closest to him.

To Robert Morris, who once told him that his influence over Congress and the people would eventually win the war and put the states in a position to enjoy the fruits of victory, he said: "Influence is not government. What we need now and must build toward even more diligently after the struggle has ended, is government."

When the mutinous troops had chased Congress into the fields and were ready to proclaim Washington king, he argued just as forcefully against such madness as he did later against any other expression of mob-mindedness. At the end of his second term, he could with ease have continued in power, for his standing was such that he could have overcome any opposition, if any had asserted itself. But nothing was farther from his mind than to defeat the objects of a system of government which he had made such sacrifices to create.

During the war Washington had kept up an extensive correspondence with leaders in different sections with a view to strengthening the

hand of Congress, his insistence always being that, in peace or war, a strong government is absolutely essential.

At the close of the war, he sent a circular letter to the governors of all the states in which he said: "There are four things which I humbly conceive are essential to the well being, I may even venture to say, to the existence of the United States as an independent power: First, an indissoluble union of the states under one federal head; second, a sacred regard to public justice; third, the adoption of the proper peace establishment; and, fourth, the prevalence of that pacific and friendly disposition among the people of the United States which will induce them to forget their local prejudices and policies; to make those mutual concessions which are requisite to the general prosperity; and, in some instances, to sacrifice their individual advantages to the interest of the community."

Immediatley after the adoption of the Constitution, he showed clearly why he had worked for it and what he understood it to signify. "The Constitution," he wrote, "is provided with more checks and barriers against the introduction of tyranny, and those of a nature less liable to be surmounted, than any government hitherto instituted among mortals hath possessed."

And again: "The power under the Constitution will always be in the people. It is entrusted, for certain defined purposes and for a certain limited period, to representatives of their own choosing."

He clearly stated the necessary accompaniment of such power: "No man is a warmer advocate of proper restraints and wholesome checks than I am, but I have never yet been able to discover the propriety of placing it absolutely out of the power of men to render essential services because the possibility remains of their doing ill."

Writing with reference to sectional jealousies, the danger of which he clearly foresaw in a nation such as the one which had come into being, he said: "As there are a variety of interests in the Union, there must be yielding of the parts to coalesce the whole. Now a state might decide on a matter which, though apparently for the benefit of it in its unconnected condition, may be repugnant to the interests of the Nation, and eventually to the state itself."

In 1788, he called attention to the representative feature of the government as the best safeguard against oppression in any form:

"The general government is not invested with more powers than are indispensably necessary

to perform the functions of good government, and consequently no objection should be made to the quantity of power delegated to it.

"These governmental powers (as the appointment of all rulers will forever rise from and at short, stated intervals recur to the free suffrage of the people) are so distributed among the legislative, executive and judicial branches, that the government can never be in danger of degenerating into a monarchy, an oligarchy, an aristocracy, or any other despotic or oppressive form, so long as there shall remain any virtue in the people."

In his Farewell Address, Washington gave the most solemn and prophetic warning against the menace which would arise to liberty through veiled attempts to weaken the government by changing the basic principles laid down in the Constitution.

In the course of that memorable valedictory, he said:

"Toward the preservation of your government and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One

method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember, that time and habit are at least as necessary to fix the true character of governments as of other institutions—that experience is the surest standard by which to test the real tendency of the existing constitution of a country —that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion—and remember especially, that for the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty, is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property."

John Marshall, whose decisions as Chief Jus-

tice were later to carry on Washington's plan for the government and whose devotion to the great leader was exceptionally strong, delivered the following speech to the House of Representatives on Dec. 18, 1799, on the news of Washington's death:

"Our Washington is no more! The hero, the sage, the patriot of America—the man on whom, in times of danger, every eye was turned and all hopes were placed—lives now only in his own great actions and in the hearts of an affectionate and afflicted people . . . .

"More than any other individual, and as much as to any other individual was possible, he has contributed to found this, our wide-spreading empire, and to give to the western world its independence and freedom. Having effected the great objects for which he was placed at the head of our armies, we have seen him converting the sword into the plowshare, and voluntarily sinking the soldier in the citizen.

"Having twice been unanimously chosen the chief executive of a free people, we see him, at a time when his election, with universal approval, could not have been doubted, affording the world a rare instance of moderation, by withdrawing from his high station to the peaceful walks of private life.

"However the public confidence may change, and the public affections fluctuate with respect to others, yet with respect to him, they have in war and in peace, in public and in private life, been as steady as his own firm mind, and as constant as his own exalted virtues."

CHAPTER VI

HAMILTON, THE MASTER-BUILDER

WHATEVER Alexander Hamilton touched, lived. While still a child, he put energy into a languishing small store in the Indies. As a freshman, he attended a revolutionary meeting in New York and gave his audience a new thrill toward freedom. While still under age, he was appointed to what for most youths would have been a messenger boy's service as aide to the Commander-in-Chief of the American army. Within a short time he had not only become the confidential agent of Washington, in charge of many important and highly delicate military missions, but had actually set his hand to the seemingly hopeless task of framing for the government a financial policy which would make it possible to achieve success in arms.

At the age of twenty-five, having served six years in the Revolutionary army, he was admitted to the bar in New York, where, within an incredibly short time, he sprang to leadership.

Grasping the need for a stable government on a permanent foundation, he took a leading part in bringing about the Constitutional Convention, which he spurred on as much as any other delegate, despite his brief attendance.

Finding journalism depraved, vitriolic, unconvincing and, therefore, useless for carrying to the people the real significance of the Constitution which was to be submitted to their conventions for ratification, he conceived and was mainly instrumental in executing a plan whereby *The Federalist* series came into being, not only attaining his goal but making a permanent contribution to the literature of the Nation.

Confronted with a packed state convention of professional politicians, who were determined to prevent the ratification of the Constitution, Hamilton argued so effectively that he eventually won over the spokesman of the opposition himself, and turned a desperate situation into one of tremendous benefit to his state.

Appointed Secretary of the Treasury by Washington when the new government came into being, Hamilton, then only thirty-four years old, formulated three epochal policies for the government. These policies laid down the lines upon which our people have built for over a century—and will build.

Scarcely five and a half feet high, impetuous, haughty, Hamilton received while still in the army the title, "the little lion." There was a dual fitness in this. His family, dating back with distinction for five centuries, had on its coat of arms a lion rampant. Its motto was, "Action and Results!" Hamilton, more than almost any man in the history of the American people, got both action and results, and primarily because of his lion-like qualities.

His triumphs were swift and had about them the effect of being inevitable. Emerson, in describing the real genius of this type, said: "What others effect by talents or by eloquence, this man accomplishes by some magnetism. 'Half his strength he put not forth.' His victories are by demonstration of his superiority, and not by crossing bayonets. He conquers because his arrival alters the face of affairs. 'Oh, Iole, how did you know that Hercules was a god?' 'Because,' answered Iole, 'I was content the moment my eyes fell on him. When I beheld Theseus, I desired that I might see him offer battle, or at least guide his horses in the chariot race; but Hercules did not wait for a contest; he conquered whether he stood, or walked, or sat, or whatsoever thing he did.' Man, ordinarily a pendant to events, only half attached, and that awkwardly,

to the world he lives in, in these examples appears to share the life of things, and to be an expression of the same laws which control the tides and the sun, numbers and quantities."

Talleyrand, one of the most astute men of his time, placed Hamilton above Pitt and Fox as a statesman, and ranked him with Napoleon as a dynamic personality.

After the new government had begun to function, his powers showed themselves at their best. But he was brilliant and irresistible in the fight in the New York convention, called for passing upon the proposed Constitution.

No one, after reading his presentation of the issue to the convention of his state, and Madison's to that of Virginia, can claim that there was any doubt left as to the scope and significance of the representative form of government which it was proposed to set up. Hamilton, in spite of the fact that he had what amounted to a packed convention against him, did not trim to the mob and pretend that a republic and a democracy are identical. He was just as clear on this point in the state convention as in *The Federalist.*

Looking straight at Governor Clinton's henchmen, he said:

"It has been observed that a pure democracy,

if that were practicable, would be the most perfect government. Experience has proved that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure deformity. When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity. In those assemblies the people of one faction brought forward their plans of ambition systematically. They were opposed by their enemies of another party; and it became a matter of contingency whether the people subjected themselves to be led blindly by the one or the other."

Discussing class distinctions he said: "Look through the rich and the poor of the community; the learned and the ignorant. Where does virtue predominate? The difference indeed consists not in the quantity but the kind of vices which are incident to the various classes."

And again: "After all we must submit to this idea—that the true principle of a republic is that the people should choose whom they please to govern them. Where this principle is adhered to; where in the organization of the government the legislative, executive and judicial branches

are rendered distinct; where, again, the legislative is divided into separate houses and the operations of each are controlled by various checks and balances, and above all by the vigilance and weight of the state governments, to talk of tyranny is to talk folly."

He later paid his respects to the agitator who, in order to gain power, pretends that the people are enslaved and that he alone can free them:

"There is a class of men who, in all the states of our republican system, either from desperate circumstances or irregular ambition, or a mixture of both, will labor incessantly to keep the government in a troubled, unsettled state, to sow disquietudes in the minds of the people and to promote confusion and change. Men of this stamp, while in their hearts they scoff at the principles of liberty, while in their real characters they are arbitrary, persecuting and intolerant, are in all their harangues and professions the most zealous, nay, if they are to be believed, the only friends of liberty. Convinced that as long as order and system in public affairs can be maintained their schemes can never be realized, they are constantly representing the means of that order and system as chains forged for the people. Themselves the only plotters and conspirators, they are spreading tales of plots and

conspiracies; virtue and liberty constantly on their lips; fraud and tyranny in their hearts."

In discussing the distinguishing features of the system of government provided for in the Constitution, Hamilton wrote in Article 9 in *The Federalist:*

"From the disorders that disfigure the annals of previous attempts at republican government, the advocates of despotism have drawn arguments, not only against the form of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and advocates. It is not to be denied that the gloomy portraits which they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impossible to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, has received great improvement. The efficacy of various principles, either not known or imperfectly known to the ancients, is now well understood.

"The regular distribution of power into dis-

tinct departments; the introduction of legislative checks and balances; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: These are wholly new discoveries, or have made their principal progress toward perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained and its imperfections lessened or avoided."

But Hamilton's crowning services were rendered as Secretary of the Treasury, an office which he interpreted to be virtually that of a prime minister, and in which he distinguished himself for the entire five years of his incumbency.

Within a short time after assuming that post he had created most of the financial machinery through which the government operates to this day. He did this without precedent to go by and without any organized staff or group of experts on which to call for assistance. He simply created the machinery from the ground up and did it on such broad principles that it has never been possible to improve upon it. Furthermore, he had to provide not only the agencies for handling public funds, but the funds as well, for there was nothing upon which to operate. A mint, an

audit system, and governmental income—these were some of his first tasks.

Having attended to the more pressing problems, he passed on to the bold and far-reaching concepts. It is on his handling of these that he is entitled to rank among the ablest statesmen of all times. His great dreams were:

(1) A financial policy that would strengthen the Nation internally, and by its vigor and honesty command the respect of the world.

(2) An independent foreign policy that would increase the pride of citizens in the Republic and eventually make them secure from dangers from abroad.

(3) An industrial policy that would not only make the United States self-sufficient commercially, but would give to its individual citizens that opportunity for self-unfoldment which, in the breadth of his vision, he saw to be one of the chief ends of well-rounded government.

In the first two of these tasks he succeeded completely. One of the first steps in his financial policy was to compel the payment of all debts incurred by the various states in winning the war. This at once stirred up resentment. The policy of repudiation, always a popular one, had been generally accepted. Those at home and abroad who had showed their faith in and good will

toward the government in its dark hours were to be compelled to go without being repaid.

All kinds of specious arguments were brought forward to justify such a position, but Hamilton held grimly to the fact that a government which intended to amount to anything in the affairs of men could not begin by defrauding its friends.

Eventually he had his way, compelling the government to assume the state debts and to pay them in full. At once, in America and in Europe, men realized that the government of the United States amounted to something.

Similarly in establishing a national bank, Hamilton ran into tremendous obstacles, and bitter jealousy on the part of the states and of weak-government advocates.

Here Hamilton showed his genius as a builder of the Constitution. He at once realized that one of two attitudes had to be assumed toward the Constitution and the government which functioned under it. The Constitution could be interpreted by the letter and the government could be shackled to virtual impotence, or the Constitution could be interpreted broadly, and the government could then be operated according to its implied as well as its enumerated powers.

Hamilton conceived the government of the United States as something born to live and

grow, not as something which was to be slowly strangled by those entrusted with its direction. Therefore, he insisted that in creating the government it was implied that it was to have the powers necessary to its successful and vigorous operation.

In the exchange of recommendations on this point between Hamilton and Jefferson, for Washington's benefit, Hamilton won and the way was paved not only for the establishment of a national bank, but for the vast policy of strengthening and extending the functions of the government until it would be really adequate to the needs of a world power.

When the test of this issue was made many years later before the Supreme Court, Webster expounded the doctrine with convincing clearness and Marshall rendered on it one of the most momentous decisions in the history of that tribunal. Nevertheless, it is not to be forgotten that it was Hamilton, the master-builder of the Republic, who looked fearlessly into the future and formulated the doctrine without which our national development would have been impossible.

In his foreign policy Hamilton aimed at two things: Avoiding entangling alliances or connections with the Old World, and keeping the

Nation vigorous enough to discourage and, if necessary, to repel any attempt on the part of European nations to menace the independence or prosperity of America.)

The first of these ideals eventually took shape in the Monroe Doctrine, which constitutes one of the chief diplomatic accomplishments of the Republic. The second became an actuality through the centralization of the government, which soon gave the Nation the strength requisite to its new tasks.

The third and largest of Hamilton's goals, a gigantic national industrial system, far-reaching enough to be entirely self-sufficient and so intelligently and broadly operated as to benefit the Nation and at the same time call out to the fullest the faculties of the individual, has been only partially realized.

There are signs, however, that the Republic is moving around to an appreciation of the value of this great dream, just as it has come to an understanding of the value of the other major policies of Hamilton.

Hamilton's dream has been chiefly presented as the protective system, whereby infant industries were to be fostered until such time as our own manufacturing system should have become powerful enough to more than hold its own with

all outside competitors, both for our own and for world markets.

This was a part of what he had in mind, but only part. It is true that he saw that to be really independent of Europe, America would have to be commercially as well as politically capable of taking care of herself. He regarded a powerful manufacturing system, well supplied with raw products from within the national boundaries, as a military as well as a commercial necessity.

In a time when men were attaching disproportionate importance to agriculture, his was almost the only commanding voice in America to call attention to the urgent need for manufactures and for a comprehensive policy toward manufacturing.

Having found in Hamilton a troublesomely aggressive cabinet leader, Congress called on him for a report on manufactures, not because Congress had any particular interest in or inclination toward developing the subject, but because it was thought that since Hamilton had been making a number of general recommendations and had actually had a hand in starting several manufacturing enterprises, it might be just as well to give him a task which would keep him thoroughly occupied.

The result was one of the ablest state papers ever produced. Hamilton devoted a year to the task, and when his report was made it contained a remarkably accurate survey of the manufacturing assets of the country and outlined a sweeping policy for the future.

Hamilton not only made a careful research of all the industries of any importance in the country, but indicated their probable lines of development and made a number of valuable suggestions as to the creation of industries for which he thought there was a special need. To give an illustration of the insight which he revealed, it is only necessary to point out that he anticipated by more than three-quarters of a century the line of development which cotton manufacturing would take in America.

Not content with his general findings and the recommendation that, where necessary, governmental aid be extended in building up manufacturing enterprises, Hamilton outlined his plan for an industrial capital for the nation, from which the tremendous organism which he had in mind would be guided and harmonized. He also intended to have the agricultural and manufacturing factors in the national life so adjusted and related to one another that they would be mutually helpful.

Here was the germ of that idea of regional development and surveying for industry to which the commercial leaders of the Nation are just now beginning to bend their attention.

The driving force in this vast industrial entity which Hamilton planned was to be an American system or basis for dealing with individuals. Long before there was any talk of man being chained to a machine, Hamilton saw the danger of a too narrow industrial policy on the part of either capital or labor.

"Minds of the strongest and most active powers for their proper objects," he said, "fall below mediocrity and labor without effect, if confined to uncongenial pursuits."

And again: "We need to provide for a diversity of talents and for a variety of rewards for merit, and to develop a system which will not only carry us forward as a Nation but will constantly call out 'come up higher' to all who by their ability or their industry are entitled to advancement.

He insisted that no industrial system was beneficial either to the community or to its employes if it graded its best workers down to the common level. He saw America, politically and industrially, as a Nation which should forever keep

"broad and open" the avenues to the advancement of the individual.

Just as he was convinced that there could be no successful operation of the government from beneath, so was he firm in the conviction that industry could not be directed from beneath. But he insisted again and again that the most valuable men would probably forever come from beneath. For that reason, as well as out of regard for the rights of individuals, he held it to be to the interest of the government and of industry to treat men as individuals and to offer every inducement for individual fitness to assert itself.

Those who see in Hamilton a man who believed blindly in the efficacy of a machine, in either government or industry, greatly err. No one realized more fully than he that the winning of the war was only a first step and that the actual adoption of the Constitution was still preliminary. Even after the new government was under way he said: "The business of America's happiness is yet to be done."

That happiness he saw to be inextricably bound up with industrial as well as political problems. He was too honest and too wise to proclaim the Millennium merely because a few names had been attached to a document and

the framework of government had been set up.

Looking far ahead he saw that the two great problems of the modern world would have to be solved together.

He maintained that the happiness of the community is of a part with that of the individuals making it up, but insisted that the community can only make permanent strides forward in so far as there is a courageous refusal to treat with men in mobs.

CHAPTER VII

MADISON, THE CHAMPION

JAMES MADISON, though far from being a giant of the type of Washington or Hamilton, ranks with them in his untiring zeal and his effective services in framing and securing the adoption of the Constitution, and, in a limited sense, deserves the proud title, "the father of the Constitution." It is certainly not too much to say that without him Virginia would not have ratified when the issue was submitted to the state convention.

Pitted against him there was the most persuasive orator in the early history of the Nation—Patrick Henry—who had been one of the powerful voices to call the colonies to arms, and who vigorously opposed the logical consummation of the movement which he had helped to set on foot. Likewise all of the "machine" politicians in Virginia, as in New York and the other states, bitterly resisted the attempt to form a new government, seeing therein the certainty of curtailment

of their own supremacy as masters of independent commonwealths.

Virginia's decision was awaited with particular anxiety for two reasons, entirely apart from her individual importance. In the first place, eight states had already ratified, and by approving the Constitution she would make it possible for the new government to go into force, thereby providing a strong leverage on the other states. But the really vital reason for the anxiety of the friends of the Constitution over her decision was that it was generally conceded that Washington would be absolutely necessary to put the new government into successful operation. It would be preposterous to think that he, one of Virginia's most loyal sons, would accept the leadership of a Nation in which his state was not included.

As a matter of fact nine states had ratified before the Virginia vote was taken, but in the heat of the controversy the friends of the Constitution could not tell accurately the popular trend.

In the Virginia convention, as in the Constitutional Convention, Madison spoke more frequently and more effectively than any man in attendance. Even the eloquence of Henry could not overwhelm him. Frail, logical, soft-

spoken, he was an admirable opponent for the lion-like fury of Henry and his lieutenants. In the background of this gathering, as in the one at Philadelphia, the figure of Washington moved, and with tremendous effect, but it is not to be forgotten that it was Madison, aided by John Marshall, who on the floor met every objection of his opponents and secured the support of Virginia for the new government.

It was in the Virginia convention that Madison made the most dramatic and altogether pleasing appearance of his entire career. Nevertheless, his work prior to the Constitutional Convention, during the sessions of that body and as one of the authors of *The Federalist* was in reality more substantial.

The concept of the new government was primarily Washington's. The bold plan for making it a reality was Hamilton's. To Madison fell the difficult task of actually framing a workable and acceptable policy and then acting as floor leader for the proposed government through two conventions.

It has been stated that among all the exceptionally talented delegates to the Constitutional Convention several others could have formulated as good a statement of what was required. That might have proven true. The fact is, how-

ever, that Madison actually performed that task.

Likewise another equally effective floor leader might have been found. Yet we are again confronted with the fact that Madison was that leader.

Similarly, his place on the staff of *The Federalist* might have been filled by another, though this is very doubtful in that he brought to the task a wealth of historical information and an understanding of the true significance of the proposed form of government which far exceeded that of either of his co-workers.

There can be no question that in his self-imposed task of reporter of the Constitutional Convention he rendered a service which, though not of much importance at the time except in that it supplied unexcelled material for articles in *The Federalist,* is now of inestimable value to all who wish to get an understanding of what actually went on in that remarkable gathering and of what the framers of the Constitution intended it to accomplish.

From a purely physical standpoint, it is difficult to understand how a man of Madison's slight strength could for four months stand the strain of making in his own handwriting a brief of every utterance in the convention, while he

himself acted as the chief upholder of the plan in actual debate. As if not content with that burden, he worked from four to five hours each night in transcribing, amplifying and clarifying his notes, in many cases supplying cross-references and valuable sidelights on the proceedings.

In this connection it is pleasing to recall that Madison, who was never wealthy, resolutely refused in his last years to sell his reports to publishers, in spite of the fact that the ban of secrecy which had been placed upon the proceedings of the convention could easily have been regarded as lifted at that late date. Furthermore, he was, by the multitude of uninvited guests who came to his home after he abandoned public life, well-nigh impoverished. But he felt that it would be unwise to precipitate an unnecessary revival of the debates in the convention while the Republic was still in its infancy and while so many of those who had helped to start it on its way were still alive. He attached much importance to these reports however, and left them to his wife under a special provision in his will. She later sold them to the government.

Madison also performed a valuable service to his country in working toward and being to a considerable extent responsible for the Louisiana purchase. His most substantial services were,

however, rendered outside of public office. He holds a unique place in American history, not as an executive and partisan, but rather as a man of letters and as an interpreter of the meaning and objects of government. In that sphere he must be rated along with Montesquieu, Machiavelli, Aristotle, Locke, Mill, and the others who saw the problem of human society in its larger aspects.

Madison's understanding of our people and of the government set up for them is illustrated in Article 10 in *The Federalist* series:

"Our greatest danger will be from factions. By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

"There are two methods of curing the mischiefs of faction: the one, by removing its causes, the other, by controlling its effects.

"There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence, the other, by giving to every citizen the same opinions, the same passions, and the same interests.

"It could never be more truly said than of the first remedy, that it is worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

"The second expedient is as impracticable as the first would be unwise. . . . The latent causes of faction are sown in the nature of man: and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society.

"It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm; nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

"The inference to which we are brought is that the *causes* of faction cannot be removed, and that

relief is only to be sought in the means of controlling its *effects.*

"If a faction consists of less than a majority, relief is supplied by the republican principle which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society, but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.

"By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression.

"From this view of the subject it may be concluded that a pure democracy, by which I mean

a society consisting of a number of citizens, who assemble and administer the government directly, can admit of no cure for the mischiefs of faction. A common passion of interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention and have ever been found incompatible with personal security or the rights of property. Those who patronize this species of government have erroneously supposed that by reducing mankind to a perfect equity in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions their opinions, and their passions.

"A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

"The two great points of difference between

a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly the greater number of citizens, and greater sphere of country over which the latter may be extended.

"The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose.

. . .

"In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to popular government."

CHAPTER VIII

MARSHALL AND JEFFERSON

FATE played strangely with Col. William Randolph, of "Turkey Island," Virginia, through his descendants. John Marshall, who as Chief Justice of the Supreme Court during thirty-four of the crucial years in the history of the Republic solidified the Union by his powerful decisions, was his direct descendant. Thomas Jefferson, who headed the movement to make the work of Marshall of no avail, was Randolph's great-grandson and Marshall's cousin. Robert E. Lee, was also a direct descendant of this William Randolph and Mary Isham.

The antagonism between the two cousins was fundamental! They were markedly similar in one thing only—physical strength. Jefferson was capable of raising 1,000 pounds from the floor in a straight lift, and Marshall proved to be almost inexhaustible on the march as a soldier in the Revolution and in long walks in later life. Both were of that tall, raw-boned type which is

characteristic of a vigorous stock and which is often mistaken for mere slenderness. Lincoln had the same fine-steel muscular system. Despite their strenuous mode of life, both Jefferson and Marshall lived over eighty years. Marshall was, if anything, more tenacious of a prejudice than Jefferson, who was almost in a class apart in that regard.

In the matter of the intellect, of temperament, of attitude toward life, they were totally at variance. Jefferson was brilliant and versatile, excelling all the men of his time in his ability to state the popular cause appealingly. Marshall was deliberate in his thinking, analytical, contemptuous of the passions of the hour and ready to stand against any odds for a fundamental proposition.

It might almost be said that, after the passing of Washington and Hamilton, the history of the United States for a quarter of a century was the history of the struggle between these remarkable kinsmen. Eventually the heaviest intellect won out, but not until both had been in their graves for more than three decades and the blood of their kinsmen and their countrymen had been shed on more than a thousand fields.

In a strictly historical sense, Jefferson was the reactionary and Marshall the progressive.

Jefferson insisted on taking things back to the time of the foundation of the government and, indeed, to the period preceding the adoption of the Constitution, when there had been virtually no central government. Regarded also from the standpoint of the evolution of governmental systems, he was the reactionary, for he sought to proceed from the complex to the simple, whereas the whole trend in the unfoldment of human liberty and of civilization is in the opposite direction. Marshall was the advocate of a progressive interpretation of the meaning and functions of the central government.

Jefferson made equality a religion, and at the same time contributed immeasurably to the cause of liberty on this continent and throughout the world. In his eyes, there was such a thing as going too far in "organizing" freedom and for that reason he undertook to halt the program, thereby coming into conflict with his cousin.

Jefferson wrote thus of blind worship of established institutions:

"Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they

did to be beyond amendment. I knew that age well; I belonged to it and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill-defects. But I know, also, that laws and institutions must go hand in hand with the progress of the human mind."

Marshall was always the aristocrat, but rather apt to turn up on formal occasions somewhat shabbily dressed, and might be found chatting with the hostlers when he was supposed to be entertaining select company in the parlor. He was informal toward all persons, black or white. On one occasion he attended court in his manservant's Sunday pants, his own having been covered with mud as they drove along together. On another, while standing outside a market in Richmond, being then Chief Justice, Marshall presented such a slovenly appearance that a tired scrub-woman who had just bought a turkey for Thanksgiving thought he was waiting around for employment and said to him:

"Here, my good fellow, carry this along home for me."

But when it came to an attempt to interpret away the Constitution or to render the (to him) all-important central government impotent, Marshall was a lion in the way. He said that he went into the army a Virginian and came out of it an American. So he stayed to the end of his days, working long after most men would have retired, knowing that the hand of death was almost upon him, yet unwilling to pause in his tremendous task of giving every possible bulwark to the scheme of representative, constitutional government to which he was so singularly devoted.

Jefferson wished to be remembered for three things: Writing the Declaration of Independence; framing the statute for religious liberty in Virginia; and founding the University of Virginia. In these he has his reward.

Marshall, though he left no formal statement of what he wished to commemorate him, is actually made immortal in that he breathed into the Constitution, through his decisions, the breath of life.

Without Jefferson the revolutionary spirit in the American people would not have been so captivatingly stated. Without Marshall the

liberty toward which Jefferson strove would have been swallowed up in anarchy.

Marshall's argument in its best form is to be found in the lengthy decision rendered in McCulloch vs. Maryland, in which he not only interprets the Constitution magnificently, but also makes use of many ideas and phrases which had an unmistakable effect upon Lincoln and have, through him, passed into the common thought of the Nation.

Beveridge, in his *Life of John Marshall,* abridges that decision as follows:

The opening words of Marshall are majestic: "A sovereign state denies the obligation of a law of the Union. The Constitution of the United States, in its most vital parts is to be considered; the conflicting powers of the Union and its members are to be discussed; and an opinion given, which may essentially influence the great operations of the government. He cannot "approach such a question without a deep sense of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature." Thus the fateful issue is revealed.

That Congress has power to charter a bank is "not an open question. The principle was in-

troduced at a very early period of our history, has been recognized by many successive legislatures, and has been acted upon by the judicial department as a law of undoubted obligation."

The first Congress passed the act to incorporate a national bank. The issue was then exhaustively debated. This bill did not steal upon "an unsuspecting legislature and pass unobserved," says Marshall. Moreover, it had been carefully examined with "persevering talent" (Jefferson and Hamilton) in Washington's cabinet. When that act expired, "a short experience of embarrassments" induced the passage of the present law. He must be intrepid indeed, who asserts that "a measure adopted under these circumstances was a bold and plain usurpation to which the Constitution gave no countenance."

But Marshall examines the question as if it were "entirely new"; and gives an historical account of the Constitution which, for clearness and brevity, has never been surpassed. Thus he proves that "the government proceeds directly from the people; their act through the conventions was final. It required not the affirmance and could not be negatived by the state governments. The Constitution, when thus adopted bound the state sovereignties." The states did

establish "a league, such as was the confederation, but when, in order to form a more perfect union, it was deemed necessary to change this alliance into an effective government, acting directly on the people," it was the people themselves who approved it.

The government of the American nation, then, is "emphatically and truly a government of the people. In form and substance it emanates from them. Its powers are granted by them and are to be exercised on them directly by their agents and for their benefit."

"The national government is supreme within its sphere, this resulting necessarily from its nature. For it is the government of all and its powers are delegated by all: it represents all, and acts for all. The nation, on those subjects on which it can act, must necessarily bind its component parts. This the people have not left to mere reason. For they have, in express terms, decided it by saying that the Constitution and the laws of the United States shall be the supreme law of the land, requiring all state officers and legislators to take the oath of fidelity to it."

In addition "there is no phrase in the Constitution which, like the Articles of Confederation, excludes incidental or implied powers; and

which requires that everything granted shall be expressly and minutely described."

"A Constitution to contain an accurate detail of all the subdivisions of which its great powers will admit and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public."

The establishment of a national bank, therefore, was a means to an end; the power to incorporate it is "as incidental" to the great substantive and independent powers expressly conferred on Congress as that of making war, levying taxes or regulating commerce. This is not only the plain conclusion of reason, but the clear language of the Constitution itself, as expressed in the "necessary and proper" clause of that instrument.

In answering the Jeffersonian argument that under the "necessary and proper" clause, Congress can adopt only those means absolutely necessary to the execution of the express powers, Marshall devotes much space. But in 1819 the question was unsettled and acute and had been made a political issue. In this connection the Chief Justice repeats those powerful arguments with which Hamilton called attention to the im-

portance of implied powers under the Constitution when the issue of a national bank was first presented by him in Washington's cabinet.

Marshall then reaches the conclusion that Congress may "perform the high duties assigned to it in the manner most beneficial to the people." Then comes that celebrated passage—one of the most famous ever delivered by a jurist: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Without Marshall to solidify the government, it is probable that it would have become a thinly-disguised "pure" democracy, with the judicial branch impotent and the legislative and executive ready to yield to any popular whim, however fundamental the constitutional rights involved might be.

His decisions made permanent for the central government that vigor which Washington had given to it temporarily by the sheer power of his personality and which Hamilton had only partially succeeded in making a part of the functioning organism. Without Marshall's powerful intellect to grasp and amplify the argu-

ments of Webster and without his decisions to stamp them with the approval of the final authority, the matchless orator's words would have been almost if not altogether in vain.

Marshall dominated the associate justices of the Supreme Court who sat with him, accomplishing this by his charm of manner, his unquestionable integrity and loyalty to the public welfare, and his irresistible mental powers. The decisions rendered during the long period of his sway over that tribunal came during the formative period and were handled with such mastery that they not only fixed the form of the government, but did it in such a convincing manner as to hold the respect of the Nation and eventually of the world.

It is needless to recite the various decisions of importance which he handed down, since they all followed the same general line of reasoning —namely, that the founders tried to make a real government, and therefore did not intend that it should be shackled beyond any capacity for maintaining itself or rendering any genuine service to the people.

By common consent Marshall is now ranked as the greatest jurist this country ever produced, and one of the ablest in the history of the English race. Even in the midst of the fierce con-

troversy which raged around him and his decisions while he was Chief Justice, his ability and his integrity were generally admitted. When he died the publications which had fought him most bitterly acknowledged what they had in partisanship denied in relation to the import and value of his services.

The Richmond *Enquirer,* whose attacks had galled him more than any made upon him, said when he died that it would be impossible to exaggerate his "brilliant talents." "The most grateful incense," it continued, "to his memory would be to state that he was as much beloved as he was respected. There was about him so little of the insolence of office and so much of the benignity of the man, that his presence always produced the most delightful impressions. There was something irresistibly winning about him. Strangers could hardly be convinced that in the plain, unpretending man who told his anecdote and enjoyed the jest they had been introduced to the Chief Justice of the United States, whose splendid powers had filled such a large space in the eye of mankind."

CHAPTER IX

WEBSTER, THE EXPOUNDER

DANIEL WEBSTER was more than a lawyer, an orator and a statesman. He was the voice of that remarkable period in which the American people were brought to a realization of the full meaning of constitutional government. His brilliant intellect grasped the central idea of the Republic and held fast to that which sets it apart. No understanding of the Constitution is possible without reference to him, for he expounded that document better than any man who ever lived under it. His marvelous capacity for making things clear, his rare command of language, his eloquence which still quickens after almost a century—these make his message understandable, fascinating and convincing.

His was the task of carrying on that process started by Hamilton of building the Constitution by making it expand to the needs of the Nation. The majority of the crucial decisions

on the part of the Supreme Court during Webster's lifetime were made on cases which he successfully argued before that tribunal. His expositions of the meaning of the Constitution and of constitutional government have become almost as much a part of that document as the various articles which it contains.

One of the most important of Webster's arguments was that in the Dartmouth College case, in which the issue was as to whether or not a state legislature, by enactment, could impair the obligation of contracts. It is hard for us of today, with the law of contract fortified by Webster's superb reasoning in this case, to put ourselves into the attitude of mind of the people at the time of the first real test of this tremendous issue.

It seems that with the explicit provision under the limitation of state powers in the Constitution, that "no state shall—pass any law impairing the obligation of contracts," the question would have settled itself. But the issue, in the first place, did not present itself as simply as that, and in the second place, mob sentiment, finding expression in the hasty action of a legislature, was eager to sweep over technical obstacles and have its way, putting up the authority of the state in justification of such high-handed procedure.

Of course, it was to cope with precisely such situations of mob-mindness bent upon disregarding the rights of the individual, that our system of government, with its elaborate checks and balances, was devised. But it took a powerful intellect to smash through the screens of the New Hampshire politicians and show how sinister their object was. This Webster did in establishing a precedent which has been one of the bulwarks of our industrial development and asserting at a critical time the supremacy of the national over the state governments.

With his splendid gift for putting a heart-throb into the most abstract discussions, Webster gave a hint of his personal interest in the case in the words: "It is a small college, but there are those who love it." All those who packed the courtroom, and the people of the Nation generally knew that a Dartmouth man was speaking for his alma mater. But when he had finished, it was evident that an American had spoken for the basic principles of his government.

In presenting his argument he stressed the sharp lines of demarcation under our form of government between the various branches. He showed that the legislature could not both legislate and judge. He stated the principles of

American jurisprudence in the simplest and most beautiful language. The central thought of this argument was in the words: "The power of the lawgiver is limited and defined; the judicial is regarded as a distinct and independent power. That the legislature shall not judge by act, it shall not decide by act, it shall not deprive by act, but it shall let all these things be tried and judged by the law of the land.

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of government is not therefore to be considered the law of the land. If it were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts of reversing judgments, and acts transferring one man's estate to another, legislative judgments, decrees and forfeitures in all possible forms, would be the law of the land." . . .

He then showed that the real issue was to be the validity of a contract and on that ground won his victory—the importance of which is shown by the fact that this has been one of the

most frequently cited cases in the history of American jurisprudence.

Although Webster towered in debate in the Senate, a large part of his most valuable work in expounding the Constitution was performed as an attorney in various decisive cases which he argued before the Supreme Court while a Senator. Indeed, he carried forward his work before that tribunal and in the Senate chamber in much the same way, being hardly less dramatic and non-technical before the Court than in making addresses which thronged the Senate chamber and were read by the people in every part of the Nation.

Hamilton's program for making the government worth while by making it possible for it to really function was threatened in 1818 when the state of Maryland undertook to destroy a branch of the national bank. It was on Hamilton's theory of the implied powers of the government that the national bank had been started under Washington. The institution was later allowed to lapse into non-existence. When it was revived under urgent necessity, some of the states opposed it on the ground that such an act exceeded the authority granted to the national government under the Constitution. The issue in this case, known as McCulloch vs. Mary-

land, already referred to in its relation to Marshall, was, as usual, somewhat clouded. Maryland simply proposed to tax the branch to death.

Webster disposed of that shallow pretense in a sentence: "A power of taxation without fixed limits and without guards, is a power to embarrass, a power to oppress, a power to destroy."

He then showed that the states had no right to tax an instrument of the national government, and made the real issue as to whether or not Congress had a right to create a national bank. If that act was constitutional, then it followed that the states had no right to prevent its operation. To say that the states could nullify a constitutional act of Congress was to make the central government a mere agent of the states, devoid of real power and possibilities. The creation of the government implied that it was to be given the powers to really be a government, he maintained.

He then made his famous argument, which, with the decision of the Supreme Court in his favor, has become one of the landmarks in the development of our government:

"Congress by the Constitution is invested with certain powers; and as to the objects and within the scope of those powers, it is sovereign. Even without the aid of the general clause in

the Constitution empowering Congress to pass all necessary and proper laws for carrying its power into execution, the grant of power necessarily implies a grant of all usual and suitable means for the execution of the powers granted."

The speech which Webster regarded as the best of his entire career was that in the famous "steamboat" case, technically Gibbons vs. Ogden, in which the issue was as to whether or not a state, in defiance of the interests of the rest of its citizens and of the citizens of other states, could grant a monopoly for the use of its waterways.

Robert R. Livingston and Robert Fulton had at about the same time worked out plans for a commercially practical steamboat. After efforts to interest French capitalists, the two finally turned their attention to the possibilities of steam navigation on the Hudson. They secured from the New York legislature the sole and exclusive right of making and using every kind of vessel impelled by steam in all the waters of the state. This was to run for twenty years, with a bonus system for each additional boat brought into service, so that the monopoly, if sustained in the courts, could continue indefinitely.

Gibbons meanwhile undertook to build up a

steamboat service between New York and New Jersey ports. Ogden, who had a grant from Fulton and Livingston, sought to restrain him. Gibbons fought the issue through the New York courts and, losing there, carried the case to the United States Supreme Court, with Webster as his chief attorney. The case involved not only the assertion of the superiority of the state over the national government in so far as the regulation of commerce was concerned, but threatened to throttle commerce itself.

Webster showed that under the Constitution Congress has the power to regulate commerce. He defined the scope of the powers of Congress thus:

"It is in vain to look for a precise and exact definition of the powers of Congress on several subjects. The Constitution does not take the task of making such definitions. In conferring powers, it proceeds by way of enumeration, stating the powers conferred, one after another, in few words; and where the power is general or complex in its nature, the extent of the grant must necessarily be judged of and limited by its object and by the nature of the power."

In addressing the Supreme Court in the matter of Thomas Dorr's conviction for treason in Rhode Island, he made his magnificent exposi-

tion of the provisions in the Constitution against mob rule, particularly as resorted to in an effort to alter the form of government of a state. He also contrasted our system of government with those which preceded it and showed representation to be its cornerstone. His argument was as follows:

"This case is said to involve fundamental principles of American liberty. That is true. It is always proper to discuss these, if the appeal be the reason, and not the passions. There are certain principles of liberty which have existed in other countries, such as life, the right of property, trial by jury, etc. Our ancestors brought with them all which they thought valuable in England, and left behind them all which they thought were not. Whilst colonies they sympathized with Englishmen in the revolution of 1688. There was general rejoicing. But in 1776 the American people adopted principles more especially adapted to their condition. They can be traced through the Confederation and the present Constitution, and our principles of liberty have become exclusively American. They are distinctly marked. We changed our government when it required change; where we found a good element, we left it. Conservatism is visible throughout. Let me state what I un-

derstand the principles of our government to be.

"The first is that the people are the source of all political power. Every one believes this. Where else is there any power? There is no hereditary legislature, no throne, no primogeniture. Everybody may buy and sell. There is an equality of rights. Any one who should look to any other source of power than the people would be as much out of his mind as Don Quixote, who imagined that he saw things which did not exist. Let us all admit that the people are sovereign. Jay said that in this country there were many sovereigns and no subjects. A portion of this sovereign power has been delegated to the government, which represents and speaks the will of the people as far as they choose to delegate their power. Congress have not it all. The state governments have not all. The Constitution of the United States does not speak of the government. It says the United States. Nor does it speak of state governments. It says the States, but it recognizes governments as existing. The people must have representatives.

"In England, the representative system originates, not as a matter of right, but because it was called by the King. The people complained sometimes that they had to send up burgesses. At last there grew up a representation of the

people. In our system it grew up differently. It was because the people could not act in mass, and the right to choose a representative is every man's portion of sovereign power. Suffrage is a delegation of political power to some individual. Hence the right must be guarded and protected against fraud and force. That is one principle. Another is that the qualification which entitles a man to vote must be prescribed by previous laws, directing how it is to be exercised. We know of no other principle. If you go beyond these, you go wide of the American track.

"One principle is that the people often limit their government; another that they often limit themselves. They secure themselves against sudden changes by mere majorities. The fifth article of the Constitution is clear proof of this. The necessity for such concurrence of both houses of Congress to proposed amendments, and of their subsequent ratification by three-fourths of the states, give no countenance to the principles of the Dorr men, because the people have chosen so to limit themselves.

"All qualifications which persons are required to possess before they can be elected, are, in fact, limitations upon the powers of the electors; and so are rules requiring them to vote only at par-

ticular times and places. Our American mode of government does not draw any power from tumultuous assemblages. If anything is established in that way, it is deceptive.

"It is said by opposing counsel that the people can get together, call themselves so many thousands, and establish whatever government they please. But others must have that same right. We have then a stormy South American liberty, supported by arms today and crushed by arms tomorrow. Our theory places a beautiful face on liberty, and makes it powerful for good, producing no tumults."

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CHAPTER X

LINCOLN, THE HUMANIZER

TWO powerful currents in the development of America flowed together in the remarkable personality of Abraham Lincoln. Marshall had seen the majesty of the government; Jefferson, though a slave-owner, had seen the dignity of the individual. Lincoln was the spiritual and intellectual heir to them both.

At the time when men were almost dehumanizing the Constitution by carrying interpretations of it to ridiculous and dangerous extremes, he came to rededicate government to human helpfulness. Men were clamoring in his day that the Declaration of Independence and the Constitution were mutually destructive. Abolitionists were demanding that, if necessary, the government be wrecked to secure immediate freedom for all within the Nation's boundaries. A considerable number of slave-holders were seeking an extension of their property rights in human beings.

Lincoln's was the grand concept—embracing the best in both of the conflicting programs. He would, he said, see all men loyal to the Constitution and to the splendid governmental system which it set up. At the same time, he wished that all men everywhere might be free. No one realized better than he the absolute importance of preserving the distribution of powers provided for under the Constitution, and of making the government truly vital. At the same time he sympathized with those held in bondage under a system which had been in existence before the adoption of the Constitution and which had been accepted as an unavoidable evil.

Freedom for the negro meant much to him. Constitutional government meant more. He believed in freedom, yet saw how essential it was that freedom be safeguarded—from above and from beneath.

Thus it was that he was able at Gettysburg to give that inspired restatement of the principles of the Declaration of Independence. Thus it was also that, amid all the tumult of a struggle between abolitionists and slave-holders, he never lost sight of the cardinal importance of preserving our constitutional system of government.

His was the God-like, and often fatal, gift of seeing both sides. His was the courage to hew

his way through both factions, since the great truth was held by neither, but lay, almost hidden, beyond the discordant elements. Slavery was wrong, that he saw with perfect clearness. But it had been accepted by the framers of the Constitution and had become so much a part of the life of one portion of the Nation that immediate emancipation threatened economic chaos or the disruption of the Union. He had for years been strongly opposed to the extension of slavery, and the principle of slavery in even the slave states. On the other hand, he was vigorous in support of the Constitution, which fortified slave-states in the continued possession of that kind of property.

The contradiction which had found its way into the government in its inception came to a crisis when he became President. A less fair-minded man, by rash disregard for the constitutional rights of slave-states, would doubtless have driven more states out of the Union, thereby making it probable that the disruption would have become permanent. A less courageous man might have quailed before the thought of the magnitude of the contest. That would have been disastrous to both North and South, for it would have either made the separation permanent, and therefore unfortunate for both, or it would have

patched up the fundamental differences, so that the postponed but inevitable struggle would have been even more frightful in its carnage.

His understanding of the attitude of the framers of the Constitution on the question of slavery, which was subsequently to put his complete acceptance of constitutional government to a severe test, was shown in his speech at Peoria in 1854.

His argument began in the homely fashion so characteristic of him. He had consented to give Douglas the closing hour of the discussion, he said, with a not altogether unselfish object in view. He thought that if the supporters of Douglas knew that their idol would not make a rejoinder to Lincoln, they might leave when Douglas had finished and so deprive Lincoln of the hearers he most wished to influence.

For that reason, he said, he had consented, knowing that the Democrats would stick through the meeting for the fun of seeing Douglas skin Lincoln in the last hour. Lincoln then proceeded to thoroughly skin Douglas.

"I particularly object," he said, "to the new position which the avowed principle of the Nebraska law gives to slavery in the body politic. I object to it because it assumes that there can be moral right in the enslaving of one man by

another. I object to it as a dangerous dalliance for a free people—a sad evidence that, feeling prosperity, we forget right; that liberty, as a principle, we have ceased to revere. I object to it because the fathers of the republic eschewed and rejected it. The argument of 'necessity' was the only argument they ever admitted in favor of slavery; and so far, and so far, only as it carried did they ever go. They found the institution existing among us, which they could not help, and they cast blame upon the British King for permitting it to exist. Before the Constitution they prohibited its introduction into the Northwestern Territory, the only country we then owned free from it. At the framing and adoption of the Constitution, they forbore to so much as mention the word 'slave' or 'slavery' in the whole instrument. In the provision for the recovery of fugitives, the slave is spoken of as a 'person held to service or labor.' In that prohibiting the abolition of the African slave trade for twenty years, that trade is spoken of as 'the migration or importation of such persons as any of the states now existing shall think proper and admit.' These are the only provisions alluding to slavery. Thus the thing is hid away in the Constitution, just as an afflicted man hides away a wen or cancer which he dares not cut out at

once, lest he bleed to death—with the promise, nevertheless, that the cutting may begin at a certain time.

"Less than this our fathers could not do. Necessity drove them so far, and farther they would not go. But this is not all. The earliest Congress under the Constitution took the same view of slavery. They hemmed and hedged it in to the narrowest limits of necessity. In 1794 they prohibited an outgoing slave trade—that is, the taking of slaves from the United States to sell. In 1798 they prohibited the bringing of slaves from Africa into the territory now comprising the states of Mississippi and Alabama. This was ten years before they had the authority to do the same thing as to the states existing at the adoption of the Constitution. In 1800 they prohibited American citizens from trading in slaves between foreign countries, as, for instance, from Africa to Brazil. In 1803 they passed a law in aid of one or two slave-state laws in restraint of the internal slave trade. In 1807, nearly a year in advance, they passed the law—to take effect the first day of 1808, the very first day the Constitution would permit—prohibiting the African slave trade by heavy penalties. In 1820, finding these provisions ineffectual, they declared the slave trade piracy, and annexed to

it the supreme penalty of death. Thus we see that the plain, unmistakable spirit of the age was hostility toward the principle and toleration only by necessity. But now it has been transformed into a 'sacred right.'"

Though absolutely opposed to slavery, he was nevertheless, so firm in his belief in the importance of upholding the Constitution, that he constantly risked losing many of his strongest supporters by his vigorous reiterations of the constitutional rights of the states (as contrasted with the territories) to regulate their domestic matters, including the question of slavery.

The Dred Scott decision, which was made public a few days after Buchanan's inauguration in 1857, was a heavy blow to Lincoln and others who hoped to see slavery gradually extinguished. His statement of his position on that issue is one of the most important ever made in setting forth the proper attitude of a citizen toward a Supreme Court decision which is distasteful to him. He said:

"That decision declares two propositions—first, that a negro cannot sue in the United States Courts; secondly, that Congress cannot prohibit slavery in the territories. . . . We think the Dred Scott decision was erroneous. . . . We offer no resistance to it. . . . We know that the

court which made this decision has often overruled its own decisions, and we shall do what we can to have it overrule this."

He then showed the difference between wholesale defiance of such a decision, which would amount to rebellion, and legitimate steps toward securing a decision in conformity with the popular sentiment. He did not advocate annihilating the judicial branch of the government. On the contrary, despite the fact that he was the ablest spokesman for freedom in the world at that time, he accepted a decision in favor of slavery and kept doggedly at his slower, constitutional method of attaining his end—through the ballot, which would in time make it possible to reshape the judicial branch without debauching it.

As a private citizen he was just as vigilant for maintaining constitutional government as he was when President. He resented this particular decision by the Supreme Court. He thought it based on false premises and false reasoning. He thought that it was a political decision. He stated plainly that the judges were hopelessly divided on various salient points. He knew that it was a tremendous weapon in the hands of his opponents.

He, nevertheless, accepted it as binding until the same final authority should render a decision

overruling it. That branch of the government, he felt, was in error and was going in direct opposition to the will of a majority of the people of the nation. However, he would not destroy the efficacy of the government as a whole by maiming one of its most important branches. He would not destroy the government because it would not immediately answer to the will of the people. On the contrary, he fully realized that the strength of the government and its crowning glory was in the fact that the Constitution set up barriers against the complete sweeping away of the government, and particularly the judicial branch, under the heat of popular excitement, properly or improperly aroused.

His letter in reply to Horace Greeley's attack on him in 1862, shows that, eager as he was to see "all men everywhere free," he never, even amid the strain of war, lost sight of the paramount importance of the Union and the Constitution. He was only willing to violate a constitutional right of citizens of a state when he had to choose between that course and the collapse of the Union at the hands of those whom he regarded as its arch-enemies.

To Greeley he wrote: "I would save the Union. I would save it the shortest way under the Constitution. The sooner the national au-

thority can be restored, the nearer the Union will be to 'the Union as it was.' If there be those who would not save the Union unless they could, at the same time, save slavery, I do not agree with them. If there be those who would not save the Union unless they could, at the same time, destroy slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and it is not either to save or to destroy slavery."

Lincoln's reconstruction proclamation, issued December 8, 1863, throws a strong light on his scrupulous care to preserve the constitutional balance of power between the various branches of the government, even when the executive authority was vastly increased under the President's war powers. The proclamation is particularly noteworthy because of the emphasis which it places upon the importance of a republican form of government in every state.

"Whereas in the Constitution it is provided that the President," the document begins, going on to outline the scope of the power of pardon delegated under the instrument to the chief executive. It then states the oath that those coming under its provisions and wishing to avail themselves of the same shall take. They are: First, "to defend the Constitution of the United

States," and secondly, "the Union existing thereunder."

The dividing line between the governmental departments is again emphasized in the provision that the oath shall contain a pledge to "abide by all acts of Congress passed during the existing rebellion with reference to slaves, in so far as they are not repealed, modified or held void by Congress or by decrees of the Supreme Court."

Upon such compliance, the proclamation continues, each state would receive the benefit of the constitutional provision which declares that "The United States shall guarantee to every State in this Union a republican form of government."

"It may be proper," the President continues, as if anxious to stamp in the minds of the people the importance of the constitutional questions involved, "further to add that whether the members sent to Congress from any state shall be admitted to seats, constitutionally rests exclusively with the respective houses, and not to any extent with the executive."

His object in this was just as plain as that of Washington in setting an example of forbearance from using military power or prestige to override a representative, constitutional form of government. Washington could have con-

tinued in power as long as he lived, and could have completely warped the governmental system had he desired to do so while it was in its formative stage. Lincoln could have used his influence and his vastly increased war-time authority to seriously disturb the constitutionally established equilibrium between the branches of government. But he was intent upon saving the government, not only from enemies in the field, but from its friends—even from his own ambition.

CHAPTER XI

THE FRUITS

THE form of government framed by the Constitutional Convention and rounded out by Washington, Hamilton, Madison, Marshall, Webster, Lincoln and those who worked under their inspiration, gives an excellent account of itself when judged by the results which it has accomplished.

No world power of the present time has a government which reaches back without a break as far as ours does. To put it another way, no other powerful nation of today has escaped one or more complete changes in its governmental system since our Republic came into existence. Glance for a moment at the foremost nations of the modern world: England, Japan, France, Germany, Russia, Austria, Italy and the United States.

Of these England and Japan are the only ones which have even a semblance of the governmental system under which they operated 130 years ago.

In England the revolution of less than a century ago, though bloodless, was complete, marking as it did the passing of power from the king to parliament. The curbing of the monarchy in Japan within recent years, though not yet complete, amounts to a fundamental change in the form of government. France, since we threw off the British yoke, has made the circuit from half-hearted representative government, to mobocracy and then to despotism twice.

Germany has been swept through many stages, including a loose federation of petty despots, a centralized absolutism and a form of mobocracy which today closely resembles anarchy. Russia has passed from absolutism, to democracy, to sovietism—until nothing seems stable there but the bread-line! Austria's descent from despotism, through mobocracy to anarchy has been hardly less abrupt. Italy, her hard-won independence jeopardized from the outset by failure to secure the full benefits of either a monarchy or a representative system, has permitted the populace, in a frenzy for immediate response to its will, to practically wipe out all authority—class warfare on a gigantic scale having taken its place.

In other words, Europe, having gone back to a condition of affairs similar to the widespread

chaos following the dissolution of the empire of Charlemagne, has little to offer but warnings in the matter of government. To look at it from another angle, Europe is today hardly as far along governmentally as the thirteen states were under the loose Articles of Confederation in the period between our victory over England and the adoption of the Constitution.

The United States, on the other hand, has not only established a reign of law and order over a territory larger than that of all the discordant European powers, but has actually been strong enough to exempt an entire hemisphere from the wholesale calamities which have overtaken Europe. Our system of government has been the framework upon which our prosperity has been built, the exemption of the different sections from retaliatory trade restrictions having been an important factor in our economic development.

In no country in the world is the individual so powerfully protected from oppression, at the hands of his government, or of a majority of his fellow citizens. No nation has equaled our own in generous friendship toward other peoples. None has proved stronger under the test of civil strife or struggles with foreign nations.

In short, constitutional government has jus-

tified itself by its fruits. It has stood the test of nearly a century and a half. It has proved adequate to the needs of an expanding nation. It is, as governmental systems go today, both ancient and tried. It has succeeded, and that over a considerable and critical period of time.

There has grown up a very loose habit of attributing our advancement to our isolation, our racial strength, our good luck, and to everything except one of the chief factors—our system of government. And yet, Europe would be largely isolated also, if the failure of her various governmental systems had not broken her up into a series of mutually suspicious armed camps. At least twice in the history of that continent, under the Romans and under Charlemagne, there was the opportunity to consolidate the continent. Many causes operated against such a consummation, one of them being that no adequate system of government was found.

When this country broke away from England, political philosophers and practical politicians alike predicted that America would go the way of Europe—small, hostile nations, petty kings, temporary consolidations and then revolt, after which the process would start all over again.

Montesquieu had shown that at best popular

government could only extend over a very limited area. Aristotle, observing the course of democracies in Greece, had come to the same conclusion. France was soon to watch Napoleon step as a demagogue from the pages of Rousseau and speedily make himself a despot. Those who took the trouble to glance even hastily at Roman history would have discovered that Caesar had gone over the same brief road, with almost identical phrases to entice the multitude.

The British king was confident that mutual jealousies and strife would so weaken the thirteen states that they would soon beg to come under his sway once more.

Josiah Tucker, Dean of Gloucester, expressed the opinion of thousands in Europe when he said, "As to the future grandeur of America, and its being a rising Empire under one head, whether republican or monarchial, it is one of the idlest and most visionary notions that ever was conceived even by writers of romance. The mutual antipathies and clashing interests of the Americans, their difference of governments, habitudes and manners, indicate that they will have no center of union and no common interest. They never can be united into one compact empire under any species of government whatever; a disunited people till the end of time, suspicious

and distrustful of each other, they will be divided and subdivided into little commonwealths or principalities, according to natural boundaries, by great bays of the sea, and by vast lakes, rivers and ridges of mountains."

Even the most optimistic friends of America in England took it for granted that, cutting away from the past, the states could neither consolidate successfully nor become world factors independently of one another. Indeed, as our hasty survey of the period between 1783 and 1787 showed, there was in America a very considerable portion of the population which preferred a number of independent states to one centralized government. So strong was this element that at the outset even Washington expressed grave doubt as to the adoption of the Constitution.

His solemn warning in that connection, delivered as the Constitutional Convention was about to begin its sessions, is a splendid index to his own majestic sincerity and to the tremendous obstacles which had to be surmounted:

"It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a

standard to which the wise and honest can repair; the event is in the hand of God."

The pessimists at home and abroad would have been even more confident in predicting the failure of the new government had they realized the serious conflict of sectional interests which was later to arise, and had they known that the Nation was to embrace the bulk of the continent.

As a matter of fact, the interests of North and South were soon shown to be even more fundamentally opposed than were those of almost any two dominant European powers of the last century. There was not merely economic rivalry, which had repeatedly proved destructive enough to deluge Europe with blood, but there was the moral issue of slavery, which soon shaped into a crisis threatening to be as devastating as the religious wars which had for a time reduced large portions of the Old World to barbarism.

Furthermore, as the population increased, racial demarcations became almost as pronounced as between the leading European nations. The very wealth of natural resources proved to be another incentive to discord, for the interests of the pioneer and of the thickly settled regions served to intensify sectional suspicion and ill-will.

Why was it, then, that this country, possessing

so many elements of discord, and made up of peoples from the most aggressive nations of Europe, did not go the way of the older nations? The only sufficient answer is that ours is a form of government which makes the most of our talents and minimizes our weaknesses.

The only governmental system in Europe today which is comparable with our own in its results is that of England. Superficial similarities, coupled with the childish belief that the best is always at a distance, have caused many to say that our system is almost identical with the British—the only difference being in favor of the latter.

As a matter of fact, the British system is inferior to our own, and distinctly different from it. England has no written constitution to protect the interests of individuals and minorities. It has no balance of powers between departments to prevent precipitate action. The crowning glory of the American system, the judiciary, is inferior to the legislature in the British system. There is, practically speaking, only one legislative chamber. Furthermore, the executive cannot veto an act of the legislative branch, being, in the person of the premier, simply the agent of the majority of the House of Commons.

Our safeguards against changing the funda-

mental machinery of government are also in sharp contrast to the British arrangement. The Constitution puts very strong checks upon amendments in these words: "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof."

The British, on the other hand, can at any time recast the machinery of government by a majority vote in parliament.

These, to be sure, are "paper differences," so long as governmental systems are examined abstractly. They are, however, fundamental and important, as shown by actual test.

The British system has proved itself incapable of developing a strongly centralized government which at the same time guarantees equal rights to all of its citizens. That much-praised system is in reality uniformly operative over a relatively small area and a far from considerable population. The colonies, either ruled with

benevolent despotism or given such a degree of self-government as to be virtually independent of the mother country, are undeniable proofs of the territorial limitations upon the British system.

The English government, in the form in which it is presented to us as ideal, actually functions over little more than 10% of the subjects of the British Empire. It is, furthermore, operative over an unusually homogeneous population, in a compact, insular civilization. It has never yet successfully absorbed an element as closely allied to it culturally and as near at hand geographically as the Irish.

Though England has developed her colonies, or at least has been fortunate in holding colonies that developed, she has never been able to retain them within the English system proper once they have come into their own. She is in a stage of progressive dissolution as an empire—coming more and more to be a loose federation of independent states.

In this federation, the units which are sufficiently developed have long since compelled the English government proper to grant them a degree of self-government which makes the British Empire, so far as they are concerned, an empire by sufferance only, and for only such

a period as the strongest units are satisfied with the arrangement. The other units are held in the empire by sheer force of arms, and will stay there only so long as their weakness or timidity prevents a revolt.

In other words, the system which we are invited to admire and imitate, is slowly destroying itself, in that as soon as it fits units for membership, they, for all practical purposes, become mere allies, bound by many ties, to be sure, but nevertheless capable of breaking away on provocation. It is a marvelous system, within its narrow sphere, because of the strength which it gains from the weight of tradition and the conservative mind of the "little Englander." But it is utterly devoid of those splendid balances and checks which fortify the right of all under the American system and give it characteristics capable of well-nigh limitless expansion.

The weakness of the British system is in the fact that it is too immediately responsive to the popular will. This serves to give it a certain popularity with the masses of the Island, but makes it unsatisfactory for a population not near enough at hand to share in the various stampedes of public opinion. The only manner in which a distant portion of the Empire can get its rights in it is virtually to get outside of it and

form a friendly but practically independent government.

The British system might operate over a territory as wide as ours, provided our people were as tradition-loving and as easy-going as the English are, and provided the clash of interests between our various sections was reduced to a level with the sectionalism of England. But our people are not so traditioned and are not conservative. Furthermore, we need, as indeed the British need, the balance against sectionalism and factionalism which our system of constitutional government, scrupulously adhered to, provides.

In the final analysis, the British system is, within the narrow sphere alluded to, representative, but devoid of many essential checks upon the passions of the multitude. If the British system is to prosper indefinitely, it will be solely because the sheer common sense and loyalty of the English make it possible for them to satisfactorily operate under an arrangement which would be impossible for any other people. This is not a proof that they have an ideal form of government, but rather that they have a genius for getting along despite glaring defects in their system.

Frederick Scott Oliver, a recognized British

authority on political science, points to the real defect in the British system and to the superiority of the American in the following words:

"When, however, we come to inquire closely into this matter of sovereignty, we are amazed to find how strong a likeness there is between the States of America before the Union and the British Empire at the present day. The difference lies in the dispositions of the two peoples, not in their political circumstances. In spite of our aspiration towards sovereignty (so strong and universal as almost to amount to a belief that somewhere in the empire a clear sovereignty does actually exist), in spite also of the fact that we are haunted by no fixed idea which confounds strong government with tyranny, we are victims of the same disease. There is no sovereignty. Everything hangs on sentiment, influence and management. In the three Kingdoms sovereignty so far has not been impaired; but outside these islands it is a very different matter. The theory of the empire seems hardly to have moved a step forward since the War of Independence. Now, as then, the King accepts the advice of the Prime Minister of Great Britain and Ireland. The Prime Ministers of his other dominions have no direct access to his confidence, and he is precluded from acting upon their direction unless

with the approval of the British Cabinet. Under the guidance of a dignified committee which meets in Downing Street, he conducts the whole foreign policy of the empire, declares war, or makes peace, or signs treaties whereof the consequences may effect the remotest regions of his realm.

"The theory, indeed, of sovereignty is complete and without a flaw, but it is also startling if we view it from a democratic standpoint. The imperial sovereignty which is exercised in the name of the King actually resides in the British Prime Minister, a gentleman who holds his office at the pleasure of the majority of the British House of Commons. Therefore, in the ultimate appeal, a majority of British voters is the supreme power in the empire. One democracy—for the time being the most numerous—holds a sovereignty, not merely over those portions of the King's dominions where, as in the case of India, the form of government is frankly autocratic, but over other democracies whom we think of and who think of themselves as self-governing.

"It has been the subject of much discussion whether or not a democracy is capable of exercising the functions of a despot over subject races, and the matter is not yet at rest even with the example of India before our eyes. But what

has never been questioned since the War of Independence is that a democracy pretending to a sovereignty over other democracies is either a phantom or the most intolerable of all oppressions.

"The theory of the British constitution is, as it stands, clearly intolerable, except in disuse. The powers which are imagined to exist in it would never stand the strain of being put in force. The exercise of the legal right of veto would provoke greater and more just resentment than if the matter lay in the sole discretion of the King. The consequences being so obvious, we have decided upon a timid make-believe, and for the sake of peace and good-will have laid sovereignty upon the shelf, regardless of the fact that sovereignty is the very essence of union.

"If the government of Great Britain and Ireland, which we term somewhat grandiosely the Imperial Parliament, desires anything to be done which requires colonial co-operation, it must go like the old Continental Congress, hat in hand, arguing, persuading, cajoling and entreating. By a fine tradition it has the full dignity of sovereignty; but in reality it is as impotent as the Continental Congress, and only less ridiculous because it has learned from experience the timid wisdom not to court rebuffs.

"Our real reliance is upon the sentimental quality of each great emergency to produce a dramatic co-operation. But it is wise to remember that in a dramatic impulse, though there is an *élan,* there is not and cannot be much staying-power. The tie of affection or kinship is the raw material of union, not union itself. 'Influence,' said Washington, 'is not government.' "

From the standpoint of evolution in government, our system is a step beyond the British. From the standpoint of actual functioning, it has brought us the primacy among the peoples of the earth. Americans need to get those two facts firmly in their minds. The rest of the world already accepts them.

William Pitt, with a statesman's vision, said of our Constitution when the Republic was still young: "It will be the wonder and admiration of all future generations and the model for all future constitutions."

Gladstone, after the Constitution had by its fruits so magnificently justified itself over a period of 100 years, paid it this tribute: "The American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

CHAPTER XII

STALEMATE AND FALSE DAWN

ONE of the disquieting discoveries which comes early to every student of human affairs is that so-called settlements have a baffling way of not settling things at all. Issues are reshaped or pass into new phases, but rarely indeed are they disposed of permanently in one solemn agreement, however impressive the setting and however sincere the principals.

It was, for instance, felt at the time of the adoption of the Constitution that the compromise on slavery assured an amicable and lasting solution of that even then vexing problem. However, that settlement proved inadequate, as did more than half a century of discussion and attempts at compromise.

But with the Civil War and the Nation's "rebirth to freedom," the constitutional issues back of the struggle seemed disposed of and the Constitution was apparently destined to take a place in the background of the national life. Indeed,

it was relegated temporarily to such a position.

Meanwhile, strange forces, which men had entirely overlooked, were working. The Civil War, centering on the Constitution, brought as one of its after effects a political stalemate which eventually began to affect the whole fabric of our government, and particularly the Constitution.

This stalemate, which has a powerful bearing on the present movement for direct government and on any steps to be taken in coping with it, we will now consider.

Soon after the government began to function under the Constitution, extra-constitutional agencies, known as political parties, came into existence, resembling in many ways similar devices in European lands where representative systems were in existence. They were, to a large extent, essential to the actual operation of the governmental machinery which had been created. Through certain broad principles and certain conspicuous individuals, they wrote the issues before the Nation in large letters, so that the general voter had a clear grasp of what he was supporting when he voted for his representatives.

It would give a false impression of that early period of our history to even intimate that these

parties were either sanctified or over-refined. On the contrary, they were always out for results, often ruthless, and frequently turbulent and libelous.

Furthermore, when compared with the two principal political parties of the period since 1865, they were short-lived. In other words, they had numerous clean-cut and fundamental differences, fought furiously over them and, for the most part, died young. Above all, there was no "solid" section upon which any party could count for practically unanimous support on any and all issues.

The readjustment period following the Civil War changed the relationship between the party system and constitutional government. One gigantic block of territory, which had formerly supplied so many of the Nation's leaders, was delivered over completely and apparently forever to a single party.

To understand the significance of this in the national life it is necessary to remember that before the Civil War the South had not only been the most successful portion of the Union politically, but had also produced a disproportionately large number of brilliant men who championed widely different views. It was not then a one-party section, or wedded to a single doctrine.

From the outset that sharp difference in opinions which is the accompaniment of political aggressiveness and vigor characterized its spokesman. Washington, Marshall and (at the outset) Madison, were for a centralized government, but Patrick Henry, Jefferson, Luther Martin and a host of others of the same forcefulness were against it. The divisions in politics were along intellectual, cultural, and economic lines, but not distinctly and unalterably geographical. The Federalist and Anti-Federalist parties had their followings in all parts of the country. So did most of the other important political groups of the period before the Civil War.

It seems hard for us to grasp today, but the Whig party embraced leaders as widely separated geographically as Clay of Kentucky, Webster of Massachusetts, Bell of Tennessee, Calhoun of South Carolina (until 1840), John Q. Adams of Massachusetts and Alexander H. Stephens of Georgia.

Sectional interests were already sharply defined, to be sure, but there was no unshakably "solid" vote to be counted on anywhere. In this connection a comparison of the political currents prior to the war and since, as revealed in the emergence and disappearance of parties, shows how flexible party lines were in the earlier peri-

od, and how rigid they have been in the later.

The lists which follow are for the purpose of showing the agencies which the people had for expressing their ideas politically in the two periods. No attempt is here made to show wherein the various groups differed from one another, or to what extent new parties took up and carried on the principles of expiring ones. Only groups that showed exceptional strength are listed:

1800-1865	1865-1922
Federalists	Republicans
Anti-Federalists	Democrats
Jeffersonian-Republicans	Populists
Democrats	Progressives
Democratic-Republicans	
Clintonians	
National Republicans	
Jacksonian Democrats	
Anti-Jacksonians	
Whigs	
Conscience Whigs	
Cotton Whigs	
Nullifiers	
Anti-Masons	
Abolitionists	
Free-Soilers	
Know-Nothings	
Hard-Hunkers	
Soft-Hunkers	
Northern Democrats	
Southern Democrats	
Copperheads	
Republicans	

In the first period, an important cleavage within a group generally resulted in the establishment of a new and vigorous party, which often overwhelmed its parent. In the second period, the two principal upheavals, one largely within Democratic and the other within Republican ranks, soon melted back into those organizations. Both had been doomed from the outset by the stalemate which brought the Nation to a two-party basis.

It is idle to speculate as to whether or not Lincoln's personality and vision, if he had lived ten years longer, would have been powerful enough to prevent the stalemate by treating the South in a manner which would have avoided the political petrifaction of that region.

That petrifaction actually took place and constitutes in the political sphere the most significant development or arrest of development of the last half a century in America. By anchoring one section it also, to a large extent, anchored the other, so that the two parties took on a degree of rigidity never before known under a representative government.

Minorities could no longer, by simply shouting and whirling, grow into powerful organizations bent on crusades which would stir the imagination of several million people and wreck

one or more strong political parties. During the first two or three decades following the Civil War, heroic efforts were made by the people to convince themselves that the good old days of revivalism in politics had not entirely passed away. Even as late as 1896 a tremendous effort was made to quicken the smouldering flames. But the stalemate was an accomplished fact.

The rigidity of the South produced a compensating rigidity in the North. The West, though different from the other two in many respects, was, through various causes, made an involuntary party to the stalemate.

Then began the development of those agencies of expression for minorities—the Initiative, Referendum and Recall.

Americans are incurably political by nature. They are also fond of the shortest route. Irking under the stalemate between the parties and finding therein a rigidity of prejudice which it was difficult to overcome, a very simple device was resorted to. Since party lines would not yield, why not simply treat the parties as so many ancient ruins and bore through them for the necessary romantic thrills in government?

Direct government then began to gain a following which would have been impossible in this country under other conditions. The move-

ment did not signify a premeditated and organized assault upon representative government or on the Constitution. It was not confined to one section. It was simply the reawakening of the average American to the joys of the great sport of politics.

To be sure, there were a few sinister-minded workers in the movement who realized that it meant in the final analysis a repudiation of representative government and who were anxious to see our constitutional republic replaced by a socialistic democracy.

There were also demagogues, of the type foreseen by Hamilton, who were eager for wholesale upheavals in organized society, seeing therein their only chance of securing a following.

But, broadly speaking, the general supporters of direct government saw in it nothing more than a means of getting prompt action on certain popular issues rather somnolently handled by the two parties, and an indisputable proof of the importance, intelligence and public-spiritedness of the average citizen.

It is, furthermore, not to be denied that under these agencies of direct government several highly important political advances have been made.

These could, doubtless, with the same per-

sistence and effort, have been accomplished eventually, if not as soon, without nullifying our representative system. But even if these results could not have been secured so promptly under the representative system, the question remains as to whether or not they were worth the tremendous price paid for them.

That price, we will sooner or later realize, was the disruption of the machinery of representative government in almost half of our states. Meanwhile, we will see how the yearning for a direct hand in government expresses itself, and what calm observers think of its trend.

CHAPTER XIII

"CONSTITUTION BUSTING"

THE Initiative, Referendum and Recall, the instrumentalities through which the work of changing our form of government, or literally reforming it, is going on, deserve analysis.

The Initiative is a device whereby a legislative proposal can be launched by a handful of voters. This proposal must be passed upon without amendment. It must not be altered even to perfect its phraseology. It comes under none of the tests of revision and debate which prevail when a legislative body passes upon such an issue. A majority of the votes cast on such a proposal, even though they are less than half of the average number of votes on the different issues and candidates before the electors at the same election, serves to make the proposal a law. An initiative measure can, therefore, be launched by a relatively small number of voters and passed by a minority.

The Referendum completes the direct rule

principle on the legislative side by making it possible for the voters, again by a minority vote (when the entire vote at an election is considered), to put a complete veto on any act of the legislature.

To round out the program for stultifying representative government, the Recall provides that a majority of voters can vacate any public office within the state at will.

Nicholas Murray Butler, in his excellent book, *Why Change Our Form of Government?* gives the following interpretation of the meaning of the existing passion for direct government:

"There is under way a persistent, determined and highly intelligent attempt to change our form of government. This attempt is making while we are speaking about it. It presents itself in many persuasive and seductive forms. It uses attractive formulas to which men like to give adhesion; but if it is successful, it will bring to an end the form of government that was founded when our Constitution was made and that our fathers and grandfathers have known and gloried in.

"To put the matter bluntly, there is under way in the United States at the present time a definite, determined movement to change our representative republic into a socialistic democracy.

That attempt, carried on by men of conviction, men of sincerity, men of honest purpose, men of patriotism, as they conceive patriotism, is the most impressive political factor in our public life today. In my judgment it transcends all possible differences between the historic parties; it takes precedence of all problems of a business, a financial or an economic character, however pressing; for it strikes at the very root of the government of the United States and at the principles upon which that government rests. It strikes at the very root of the institutions which we call Anglo-Saxon, and it proclaims a failure that great movement for the establishment of liberty under law, controlled and carried on through the institutions of representative government, a movement which had its origin more than two thousand years ago, and which has persisted with constantly growing force and power throughout the history of the English-speaking peoples down to our own day. We are told now that representative government has failed. We are now told that the people are either incompetent or unable to choose representatives who will really serve their highest interests, and who will be beyond the reach of the temptation offered by money, by power, or by place. The remedy is said to be to appeal over the heads of the people's

chosen representatives to the people themselves.

"These far-reaching changes are not brought forward as philosophic propositions to be examined and passed upon in principle; they are not brought forward as a complete and conscious program to be debated and discussed, to be compared with the results of the experience and the activities of the past 125 years. These changes are presented to us as specific proposals to be passed upon now here, now there, in the light not of principle but of temporary expediency. In the name of reform or of progress we are asked to give our assent now to this specific proposal, now to that. But these specific proposals, when taken together, when regarded collectively, constitute an invitation to surrender our representative republic and to build upon the place where it once stood the structure of a socialistic democracy."

As a natural accompaniment of the breaking down of the equilibrium between the people and the operative branches of the state governments, the state constitutions have been ruthlessly dealt with. Indeed, the work of "constitution-busting" has gone so far in many of the states that the distinction between a constitution and a statute has largely been wiped out. A constitution, as has well been said, is "a device to protect man's

sober and mature political judgment from his fleeting political passions and prejudices." It is intended to contain fundamental propositions and basic guarantees for human happiness.

A statute, on the other hand, is a specific application of the general principles embodied in the constitution.

Both can be changed but, under our theory of government, constitutions are supposed to be so brief and fundamental in their provisions that they will not have to be frequently or drastically altered.

In this regard a comparison of the state and national constitutions, which were in our early history so similar and are now so dissimilar, is instructive. The national constitution contains scarcely 5,000 words, while it is not uncommon today for a state constitution to contain 40,000 words.

Furthermore, these constitutions are growing every year, and no limit is in sight. The ease with which constitutions can, to use the expression of certain agitators of Massachusetts, be "laid wide open and kept that way," immediately jeopardizes those fundamental individual rights for the protection of which our state and national governments were created.

If everything, even down to such passing ques-

tions as the salaries for various minor officials, is put into a constitution, the original strength, prestige and significance of that instrument will soon be hopelessly dissipated.

Massachusetts is one of the best and most recent examples of the sport of "constitution-busting" as indulged in by a minority. Up to four years ago that state's constitution, with its careful balance of powers, was fundamentally as it had been in 1780.

When a wealthy Bostonian instituted his campaign on behalf of the Initiative and Referendum, he met with almost no response. The legislature of that state meets annually and the legislators are elected for a term of one year. That meant that any or all representatives who acted against the popular interests could be speedily rebuked and replaced.

Failing to get a following, the "reformers" abandoned open advocacy of the Initiative and Referendum, and proposed that the people be allowed to merely indicate their preferences on various problems by a "public opinion" vote, which would in no way bind their representatives.

Even that did not gain support for several years. Finally, however, that gigantic first stride was made, and the way was open for the next step.

Eventually the Initiative and Referendum were submitted to the people for approval or rejection. The result, which might be called typical of this type of plebiscite, was that 170,646 people voted Yes; 162,103 voted No; and 96,698 voters left their ballots blank on that question.

Here was a fundamental change in the system of government for the state, brought about with the approval of slightly over 39 per cent of those voting at that particular election.

Furthermore, this important issue fell all the way from 54,000 to 95,000 votes behind the eighteen other amendments submitted with it. Nevertheless, that minority vote remade the machinery of government for the state.

This swift change was brought about in spite of the fact that during the debates on the issue and in the discussions in the press the advocates of the Initiative and Referendum did not make a convincing exhibit of popular measures which had been killed or blocked by the legislature.

The change in the form of government was not only fundamental, but it was made with an abandon which must have satisfied the most rabid "reformers," particularly in the facilities for initiating measures. It was provided that a number actually amounting to less than 3 per

cent of the registered voters could launch an Initiative measure, while the Referendum could be launched by as low as 4 per cent.

Even that, however, does not seem radical enough for some of the "reformers," especially in Oregon, one of the sources of the movement for direct government, where a spokesman for the Initiative, Referendum and Recall, commenting on the result in Massachusetts, said: "And Massachusetts thinks that she has been real naughty and has played the dickens. As a matter of fact this thing has only started. That conservative old state reminds me of a Sunday-school teacher on a nut-sundae jag."

As the Initiative, Referendum and Recall have spread, the minority-control feature of the plan has become more and more apparent.

E. P. Oberholtzer, whose investigations of the actual workings of direct government in America extended over almost 15 years and are regarded as authoritative, states the situation confronting us in these words:

"The representative system faces a grave crisis in its history and it will soon be, if it is not now, necessary for those who have an understanding and appreciation of this form of government to come forward in its defense. The task which John Adams, Washington and others performed

in the eighteenth century needs to be re-performed. The philosophical movement led by Rousseau, which had for its natural consequence the upheavals in the latter part of that century, was a mere vague and fanciful appeal for a new political order, and in no wise comparable with what is taking shape today . . . . Today we have direct legislation run wild. . . . .

"For a representative system of government with a division of powers, the defense is properly set up that it protects minorities. Yet in the use of the Initiative, Referendum and Recall, what is seen? The minority often absolutely controls the majority. Indeed it has come to be assumed that this is their right. In the form in which the direct law-making power is now conferred upon the people, this idea is dominant. If the required number of voters, say 5 to 15 per cent of those voting at the last election of candidates, propose a law, it is stipulated that this law shall be passed 'without alteration' by the representative legislative authority. Only if it be not enacted at the behest of this relatively small number of voters is it submitted to the people.

"In the same way in the case of the Referendum, 10 to 20 per cent can 'protest' against the passage of a law which must then be 'reconsidered' by the legislature. If the law upon

reconsideration is not 'entirely repealed,' a vote is taken. All this machinery is in the interest of the minority. The initiated or referred measures are passed by a majority of those voting which, if in a rare case it reaches 80 per cent, seldom attains anything like that proportion.

"In only 14 out of 32 cases in a recent election in Oregon did the percentage of those voting on initiated or referred measures amount to 70, or more than 70 per cent, of the vote cast on candidates. When the percentage is as high as 70 per cent, 36 per cent of the voters can enact a law. Compilations in reference to constitutional amendments on 240 out of 472 questions submitted to the people show that the vote was less than 50 per cent. Here, in the best case, 26 per cent of the voters could and actually did adopt laws. In one of our states two amendments were adopted recently by 6 and 7 per cent of the voters of the state respectively."

The conclusions of Woodrow Wilson on the Initiative and Referendum are significant. He said:

"The vote upon most measures submitted to the ballot is usually very light; there is not much popular discussion, and the Referendum by no means creates that quick interest in affairs which its originators had hoped to see it excite. It has

dulled the sense of responsibility among legislators, without, in fact, quickening the people to the exercise of any real control in affairs. . . . Where the Initiative has been employed it has not promised either progress or enlightenment, leading rather to doubtful experiments and to reactionary displays of prejudice than to really useful legislation. . . . A government must have organs; it cannot act inorganically by masses. It must have a law-making body; it can no more make law through its voters than it can make law through its newspapers."

The Portland *Oregonian,* one of the enthusiastic advocates of direct government before the movement had been put to a thorough-going test, summarizes its failure in these words:

"That both Initiative and Referendum within proper limitations might be useful was the belief of large numbers who joined in voting for their adoption, yet who did not foresee that they would fall into the hands of faddists, sophists, schemers, doctrinaires of all sorts, who would appeal to them against representative government and methods of ordinary legislation. They were adopted under the impression that they were to be the medicine of the constitution, cautiously administered when occasion might require; not its daily bread. . . . They encourage every group

of hobbyists, every lot of people burning with whimsical notions, to propose initiative measures or to interpose objections through referendum appeals. They have the effect practically of abolishing Constitution and laws together; or, at least, of keeping people who would defend the stability and orderly progress of society always on guard, always under arms for their defense. . . . The whole of this modern scheme of setting aside the Constitution and laws altogether and of forcing legislation, without debate or opportunity of amendment, turns out badly, because it gives the cranks of the country an opportunity which they have not self-restraint enough to forego. Careless people, or people who do not like to be bothered with importunity, sign petitions to get rid of the solicitors, and when the election comes on the proposal is likely to be neglected by the body of voters and carried by the votes of the comparatively few enthusiasts who favor it, reinforced by the votes of those who mark their votes ignorantly, or mechanically, without understanding the matter at all. . . . It was not intended that representative government should be abolished by the new system, but it has been abolished by it. Any group of persons from the cave of Adullam, or other groups of persons of ill-arranged intellects, can propose

initiative measures or call the referendum; and there is danger always that the crudest measures may pass into law through the inattention of voters, or that proper legislative measures may be turned down through the referendum. . . . It could not have been supposed that there would be so many persons devoted to strange and multifarious crazes. . . . Representative government after all is a pretty good thing. Oregon will yet return to it."

CHAPTER XIV

THE COST

DIRECT government, fascinating though it may be to those who see in politics the great American pastime, takes on a different aspect when the per capita cost of this diversion is taken into consideration.

Strangely enough, in all of the analyses which are made every year of the cost of government in the United States, no attempt is made to compare the effect of direct government as contrasted with representative government upon the state treasuries.

Indeed there are almost no records which show in compact form the number of states which have abandoned the original strictly representative system of government and have resorted to the Initiative, Referendum and Recall. For that reason any discussion of the cost of direct government in the United States requires at the outset a list of those states which have departed from the basic American principle of government.

The following list shows the twenty-two states which have adopted direct government, together with the year in which those devices became operative in each:

So. Dakota	1898	New Mexico	1911
Utah	1900	(Referendum only)	
Oregon	1902	Arizona	1911
Nevada	1904	Idaho	1912
Montana	1906	(Never in use)	
Oklahoma	1907	Nebraska	1912
Maine	1908	Ohio	1912
Missouri	1908	Washington	1912
Michigan	1908	Mississippi	1914
Arkansas	1910	No. Dakota	1914
Colorado	1910	Maryland	1915
California	1911	(Referendum only)	
		Massachusetts	1918

With such a list in mind any investigator of state finances will soon be struck by the fact that, entirely aside from sentimental considerations, the repudiation of representative government means an appreciably heavy increase in operating costs.

The burden upon the taxpayer becomes evident upon the analysis of either the per capita cost of operating state governments, or the per capita debt of the various states. That direct government results in still another disadvantage to our commonwealths is shown in the effect which it has upon balloting in the various states.

In considering first of all the matter of the per capita operating cost by states it is best to adopt the standard laid down by the Bureau of the Census which is: "State expenses are the costs and losses of states from which no permanent or subsequently convertible value is received or receivable. They are (1) the costs exclusive of those arising from the construction or acquisition of permanent properties or improvements, which are incurred by states on account of services employed, property rented, and materials utilized in connection with the maintenance and operation of government, and the management of trusts; and (2) the losses occasioned by depreciation of so-called permanent properties, and otherwise."

Such a standard places no discredit upon any state for outlays on necessary and permanent improvements. It is, however, an illuminating test of actual operating efficiency.

The Bureau of the Census in 1923 published, under the title "Financial Statistics of the States 1922," a number of analyses of the financial condition of our states. By utilizing the statistics in that official document it is possible to make an accurate and fair comparison of the monetary merits of direct and representative government.

If the systems being considered were tested on the basis of their fruits in different nations, it would be proper for an objector to point out that innumerable divergent factors of race, climate and international politics might influence operating costs to the extent of rendering comparisons meaningless.

However, when the comparison is between an almost equal number of states under one general government, it is in order to put the two principles of government to the test of per capita costs of operation. This test becomes all the more interesting when it is remembered that the states which have adopted direct government are scattered all over the union, represent all shades of political sentiment and include many states of large population as well as others that are sparsely settled.

Figures illustrating the costs under the two systems follow:

PER CAPITA COST OF OPERATING STATE GOVERNMENTS IN STATES HAVING INITIATIVE AND REFERENDUM

Arizona	$22.74	Massachusetts	$10.81
Arkansas	4.90	Michigan	24.07
California	19.02	Mississippi	7.85
Colorado	16.69	Missouri	12.30
Maine	20.30	Montana	13.99
Maryland	12.06	Nebraska	10.83

PER CAPITA COST OF OPERATING STATE GOVERNMENTS IN STATES HAVING INITIATIVE AND REFERENDUM—*Continued*

Nevada	$44.54	Oregon	$35.31
New Mexico	17.78	South Dakota	27.92
North Dakota	17.99	Utah	19.08
Ohio	11.35	Washington	18.71
Oklahoma	7.17		

Average for the above, by states, $18.30.

Idaho is omitted from this and subsequent lists of direct government states because, though it has provided by law for direct government, it has never resorted to it.

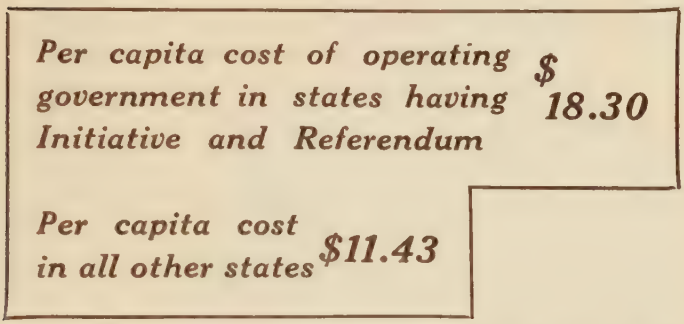
PER CAPITA COST OF OPERATING STATE GOVERNMENTS IN STATES HOLDING STRICTLY TO REPRESENTATIVE SYSTEM

Alabama	$ 7.02	New Jersey	$16.91
Connecticut	13.97	New York	13.32
Delaware	24.89	North Carolina	9.58
Florida	11.18	Pennsylvania	9.89
Georgia	5.34	Rhode Island	11.84
Idaho	11.61	South Carolina	4.08
Illinois	7.06	Tennessee	6.39
Indiana	8.10	Texas	9.48
Iowa	15.27	Vermont	14.17
Kansas	6.46	Virginia	10.62
Kentucky	7.71	West Virginia	8.39
Louisiana	11.04	Wisconsin	12.92
Minnesota	17.08	Wyoming	24.37
New Hampshire	11.65		

Average for the above, by states, $11.43.

Treating the states thus as units, we find that the per capita cost in the representative government states is $11.43; that in the direct government states $18.30. In other words, it costs 55 per cent more per capita to operate under the Initiative and Referendum than under a strictly representative system.

The last complete report issued by the Bu-


Per capita cost of operating government in states having Initiative and Referendum
$ 18.30
Per capita cost in all other states
$11.43

reau of the Census prior to the one of 1923, dealing with financial statistics for all of the forty-eight states, was that of 1920, showing conditions for the fiscal year 1919. That pamphlet shows virtually the same thing as the figures for 1922 regarding the relative merits (as reflected in terms of operating cost), of direct and representative government though the failure of direct government was not then quite as distinct.

It cost practically 45 per cent more to oper-

ate under the Initiative and Referendum in 1919 than under the strictly representative system. Between 1919 and 1921 the change in relative standing, (as revealed by a survey of state finances made in 1922 by the author) though less than 5½ per cent, was nevertheless in favor of the representative system. In that time direct government, already 45 per cent more wasteful than representative, fell to 50 per cent behind the latter in efficiency.

To put it another way, the inferiority of direct government to representative government becomes more pronounced every year that they are in operation in adjoining states. In 1919, direct government states were 45 per cent more wasteful; in 1921, 50 per cent less efficient, and in 1922, 55 per cent!

Passing on to the consideration of gross debts, the situation is even more striking. Those states which have nullified the original American system by paralleling it with the Initiative, Referendum and Recall are virtually twice as heavily in debt as the states which have held to the representative system.

The lists which follow and which support the statement in the preceding paragraph are compiled from the 1923 Bureau of the Census statistics previously referred to.

PER CAPITA DEBT OF STATES HAVING THE INITIATIVE AND REFERENDUM

Arizona	$10.12	Nebraska	$ 0.00
Arkansas	1.41	Nevada	17.91
California	20.93	New Mexico	12.37
Colorado	9.76	North Dakota	8.49
Maine	10.36	Ohio	4.96
Maryland	14.76	Oklahoma	1.68
Massachusetts	19.12	Oregon	48.12
Michigan	12.80	South Dakota	22.27
Mississippi	6.89	Utah	19.26
Missouri	8.83	Washington	0.28
Montana	7.29		

Average for the above, by states, $12.26

PER CAPITA DEBT OF STATES HAVING ONLY REPRESENTATIVE GOVERNMENT

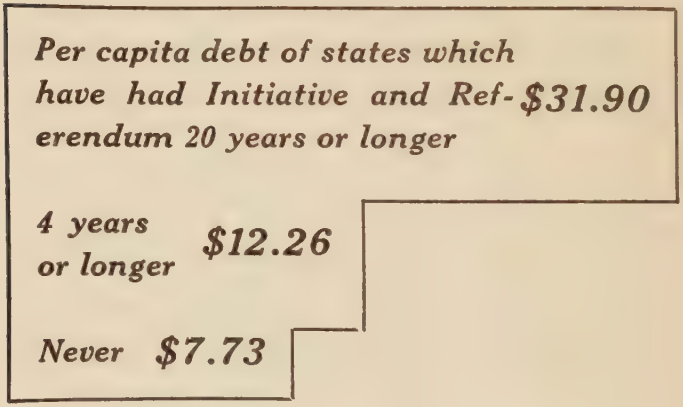
Alabama	$ 6.05	New Jersey	$ 4.98
Connecticut	4.21	New York	17.52
Delaware	25.39	North Carolina	12.59
Florida	0.47	Pennsylvania	5.45
Georgia	1.81	Rhode Island	15.18
Idaho	12.08	South Carolina	3.03
Illinois	0.28	Tennessee	7.41
Indiana	0.14	Texas	0.85
Iowa	0.08	Vermont	16.17
Kansas	0.00	Virginia	8.96
Kentucky	1.01	West Virginia	15.97
Louisiana	7.45	Wisconsin	0.80
Minnesota	8.93	Wyoming	9.75
New Hampshire	6.77		

Average for the above, by states, $7.73.

It cannot even be said on behalf of the direct government states that their heavy indebtedness

is due to public generosity expressing itself in a greater willingness to recompense the returned soldier. Of the total indebtedness of all the states as listed above, scarcely 12 per cent is a result of the World War. Furthermore, the direct government states have barely kept pace with the representative states in bonus and rehabilitation legislation.

It is, indeed, futile to attempt to analyze state debts with a view to appraising the degree of wisdom displayed by the various commonwealths in incurring indebtedness. The main point is



that the direct, compared with the representative, government states are twice as heavily in debt while being only half as able (the ratio of

debts to assessed valuation being considered) to carry such a burden.

The figures in this case bear out the conclusion to which any person pausing to think over the matter would come. A multitude, passing upon technical matters of financial policy concerning which only a few are well informed, would be less aware of the pitfalls ahead than would a small group of men who had made it their business to go into the problem thoroughly.

Apologists for the Initiative and Referendum to the contrary, the people are not conservative in financial legislation when they vote. They are neither radicals nor conservatives but simply guessers. Taken as a whole, they probably have a vague desire to keep taxes down. Actually, however, they are compelled to pass in a few seconds upon issues which are both complex and far reaching. Under such conditions they are more wasteful than their agents would be.

It would be absurd to say that the people's representatives are all that they should be or that they are always adequately informed. But one thing is shown by the financial statistics of all the states: the representative is a better guesser (if his status is put that low) than the people.

The people, in "keeping down taxes" by passing on such matters directly, have piled debts

upon themselves twice as rapidly as the representatives have in the states in which they are still chiefly relied upon in such matters.

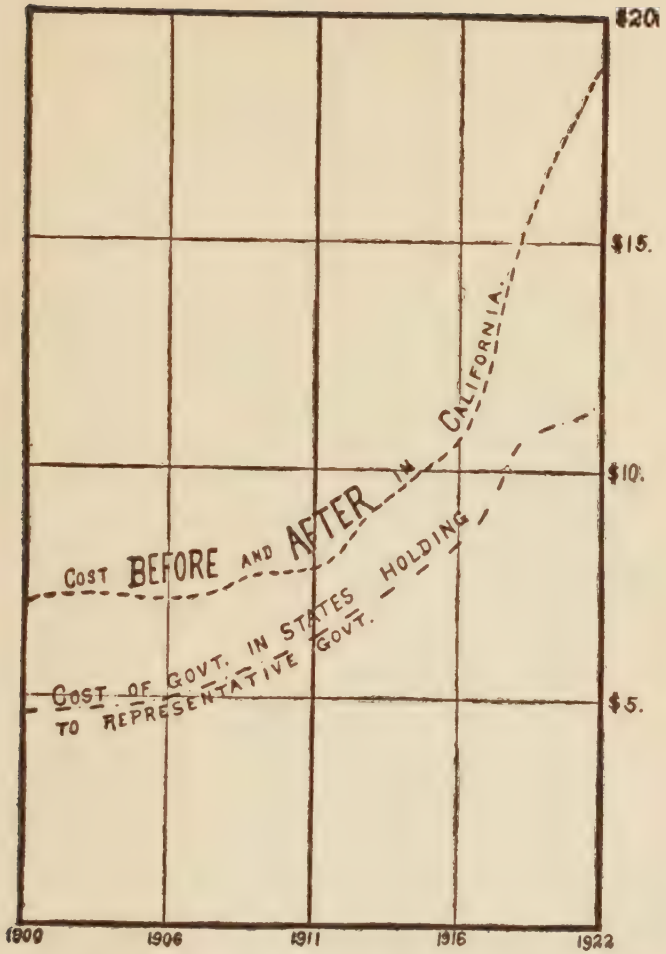
The Initiative and Referendum are also responsible for another serious blow to the American political system.

We have seen that, although they are theoretically the agencies of efficiency and economy in government, they have in actual operation proved bungling and costly.

It might be argued that, disregarding costs, the Initiative and Referendum are worth while because they educate the people up to the opportunities and responsibilities of citizenship. That indeed would be a sound argument.

It would be worth a good many million dollars annually to all of our states if people could be quickened to the intelligent use of the ballot. Some very serious blunders in financial policy would be excusable if, in feeling their way along, the people became more enthusiastic about the privilege of voting and more willing to pass thoughtfully upon the complicated problems submitted to them.

But, unfortunately, direct government has been an opiate to the body politic. It has slackened interest in the ballot, and has actually driven thousands away from the polls.



California adopted the Initiative and Referendum in 1911. Note soaring operating cost thereafter.

In this connection the case of California is highly instructive, since it is an almost perfect type of the direct government state.

In the first place, over a period of ten years the vote in California on Initiative and Referendum measures has averaged only 59 per cent of that cast for representatives of the people. This in itself shows that the persons who go to the polls are not really enthusiastic about the use of the ballot for direct legislation.

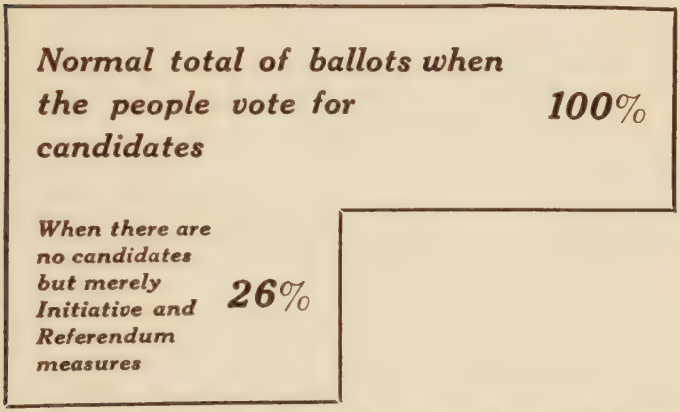
Beginning with the special election of 1911 (at which the amendment to the California Constitution providing for direct government was adopted), the following table shows the percentage of the total vote which was cast for Initiative and Referendum measures:

Year	Per Cent
1911	53
1912	61
1914	63
1915	26
1916	74
1918	59
1920	77
Average	59

It should be noted that the elections in 1911 and 1915 were special ones at which interest in candidates had nothing to do with attracting people to the polls, there being only measures to

vote upon. Therefore, the vote of 1911 is contrasted with the vote for Governor in 1910. Similarly the vote in 1915 is contrasted with that for Governor in 1914.

This method of testing the popular interest in direct government is a more than fair one. The growth in population in California was so great between 1910 and 1911 and between 1914 and 1915 that an election in 1911 in which the people were interested should have brought out a vote of at least 110 per cent as contrasted with that


Normal total of ballots when the people vote for candidates
100%
When there are no candidates but merely Initiative and Referendum measures
26%

of 1910, and an election in 1915 should have shown the same relative superiority to one in 1914.

Actually, however, there was a slump of 57 per cent in 1911 and of 83 per cent in 1915.

The constitutional amendment providing for

the Initiative and Referendum was adopted by a vote of less than 40 per cent of the vote for the preceding election, and the direct government measures have never attracted voters in a manner comparable to the drawing power exercised by candidates.

Even with candidates on the ballot to help in getting out voters, the Initiative and Referendum cannot hold the interest and the consideration of the people. Whenever there are only Initiative and Referendum measures and no candidates, the election virtually goes by default to a minority.

Direct government has, however, not merely failed to keep pace with candidates in catching the interest of the public. It has itself fallen behind and has at the same time acted as a drag on the interest in elections generally.

This is shown by the fact that of the total number of people eligible to vote in California 50 per cent more voted in the ten years prior to the adoption of the Initiative and Referendum than in the ten years following their adoption.

It is reasonable to hold direct government largely responsible for this slump. In the first place, the falling off in the vote in California has been strikingly similar to the downward trend of interest in political problems in other direct

government states. In the second place, the falling off has been nothing like so abrupt in the strictly representative states, although the loss of interest in politics has been noteworthy there also.

All of which brings us once again to the fact that the direct government movement in this country has not been a bold crusade at all, but rather a sapping and mining project on the part of minorities dissatisfied with both the old political parties.

The real problem has been, and still is, to secure a return to genuine warfare between parties —not shadow boxing over trifles. Until such warfare is forced on the parties by the people, and fundamental economic and political issues are openly raised and met, the American will have but slight interest in politics.

The direct government movement, which is really an attempt to get around the political stalemate by digging beneath the surface, not only fails to give the necessary thrill of battle to the voter, but actually wastes money and deepens the heavy sleep into which our people have fallen in matters of government.

Direct government has fed us a high-priced soothing syrup, when all that we needed was the boot.

CHAPTER XV

"RAISE A STANDARD"

THE mere fact that a program seems ideally perfect has but little weight with practical men if it cannot justify itself in actual operation. When, however, it is in conformity with generally approved principles and also shows its superiority over all other programs under oft-repeated, varying and severe tests, it is entitled to the heartiest support.

The Constitution of the United States is in this category. The form of government which it provides is strikingly similar to that ideal of orderly and buttressed liberty toward which, through the centuries, mankind has moved—the philosophers prompted by reason, the people by hope.

There have been innumerable statements of the ideal form of government. They have differed widely in many minor details. They have been framed for nations in varying circumstances and stages of development. They have, however, certain basic elements in common. From these

basic elements it is possible to determine the essential features of the "ideal government," as formulated by the world's greatest thinkers.

It would be a government in which:

1. Men of the highest ability would be called to power; and
2. Would be given the greatest possible latitude of operation so as to encourage the fullest use of their talents;
3. But would be sufficiently answerable for their deeds to prevent them from yielding to the temptation to disregard the general welfare and serve selfish ends.

These principles have been closely adhered to in the government provided for in the Constitution.

The framers were but little interested in abstract propositions regarding heredity, but they knew that ability is not transmitted from father to son with sufficient uniformity to justify hereditary rulership.

They had probably never wasted any time on wholesale mental tests, with their crops of "miracle men" and "morons," but they were excellent judges of human nature just the same, and did not blink at the fact that individual intelligence is superior to mass intelligence.

Therefore, since they could not approve a system under which heredity would be relied upon to provide the desired type of rulers, and since they knew that mob rule was an even weaker reed on which to lean, they adopted the already familiar method of representative government.

That method, it must be borne in mind, is based on the admission that selected brains are superior to non-selected. Its efficacy is in the fact that, properly operated, it makes it possible for the average man to secure the services of the exceptional man in the greatest of all businesses, that of government.

Having accepted the representative system in the abstract, the next question was as to the best means for making it actually workable.

Here we observe Washington and the other intuitive statesmen following with uncanny fidelity the lines laid down by great thinkers of the past. They were seeking to procure for the average man the services of the exceptional man.

To that end they provided certain inducements to draw exceptional men to the public service, these including: (a) sufficient real power to challenge their faculties; (b) enough freedom from meddling and mussing by the uninformed multitude to prevent driving the best men from such an occupation; (c) a reasonably long term of

office in which to round out their projects; (d) salaries which, though below the average for men of this type in other lines, would at least provide a living.

The framers of the Constitution, recognizing the requirements of the various phases of government, drew sharp lines of demarcation between them by creating distinct branches, with different provisions for each, and with elaborate machinery for their co-ordination.

Having decided to secure exceptional men, and having devised a method of getting them and of encouraging the exercise of their talents, the framers went on to the third step, that of providing guarantees that they would be public servants, and not servants of their own ends.

The various departments were, in the interests of the public, to act as checks upon one another. All officers were to be subject to impeachment for serious misconduct. Elective officers were to be re-elected or rejected at fixed intervals of not less than two or more than six years.

Above all, certain fundamental individual rights were set forth in the Constitution as sacred beyond the reach of any of the agents of the government.

Such a government rests upon a four-phase distribution of power between the people and the

three operative branches. It is not designed as a toy for fools. It is complex. It is balanced. It is not intended to be swiftly changed. It can only work successfully, as Washington repeatedly warned the Nation, "so long as there is virtue in the people."

Contrast this "ideal government," which our Constitution has so remarkably approximated, and which, in America, has stood and can stand every test except that of wholesale repudiation by the people for whom it exists, with the system of direct government which is now being sponsored in this country.

Direct government (referring specifically to the Initiative, Referendum and Recall) means:

1. Repudiation of the system of representative government, self-checked and self-balanced, and the maintenance of the proposition that average intelligence is superior to selected intelligence in public affairs;

2. The eventual lowering of public officials to the status of rubber stamps, with the result that those of the highest character and ability will not continue in such a service and those of the baser sort will only seek such employment as a means toward self-aggrandizement or toward the complete subversion of public liberty;

3. Placing in jeopardy all of those funda-

mental individual rights protected by the Constitution against mob-action, since the effect of submitting and resubmitting any and all issues to a speedy decision by the people soon reduces a constitutional safeguard to the transitoriness of a statute;

4. A heavy increase in the cost of operating the government.

Of course it will be denied by practically all supporters of the Initiative, Referendum and Recall that any such sweeping program is contained in those innocent-appearing devices.

The few who are deliberately advocating such a perversion of our form of government with a view to completely overthrowing it, will deny it because they realize fully that the people of the United States would not at this time be a party to the overthrow of a system to which they are really genuinely attached and in which they have a general, unanalytical pride.

The greater number of those who give adherence to these agencies of direct government do so without suspecting that they are playing into the hands of those who secretly wish to bring about a complete change in our machinery of government. Their very enthusiasm for our government prompts them to unthinkingly do violence to it by co-operating with that very

small band of those who knowingly work to compass its ruin.

Let anyone who is in doubt as to whether or not the Initiative, Referendum and Recall are inconsistent with our system of government ask himself these questions:

If the people can initiate any measure and make it a law without utilizing their legislators at all, and if they are in actual practice doing that more and more where the system prevails, then has not the legislative branch of the government been rendered largely superfluous?

Does not the Referendum, by giving the people the right to veto any legislative act, complete the havoc worked by the Initiative on the legislature and render that body impotent and doomed to decay?

If one of the most important powers of the executive is to closely watch and, if necessary, veto an act of the legislature, is it not a drastic and costly curtailment of the executive as well as a further degradation of the legislative power to vest the veto power in a scant majority of voters?

If our constitutional guarantees are of value to the individual, should he not be concerned over the fact that an invariable accompaniment of the Initiative, Referendum and Recall has

been to change state constitutions from brief, difficult-to-alter statements of general principles and rights to a debauched miscellany of legislation, hardly distinguishable from ordinary laws and therefore liable to be swept away quickly and without attracting much attention?

Since the vote for direct government measures invariably falls strikingly below the vote for candidates at general and special elections, is it not obvious that the multitude either believes itself incapable of successfully passing on technical problems of government, or that it instinctively distrusts agencies designed to subvert that form of representative government under which our people have made such unprecedented progress?

Since the states which have had the Initiative and Referendum for a considerable time have gone into debt more heavily than those which have held to the representative system, is it not clear that in actual operation direct government results in a heavier burden on the people than that imposed by representative government?

Since the per capita cost of operating under direct government is strikingly greater than under representative, is it not evident that direct government does not really direct?

Since the recall subjects judges, along with

all other officials, to the passing whims of the people, is it not inevitable that voters who have debauched the other departments of government will soon attempt to make the judiciary another agency for registering the passions of the moment? And when that time comes, what will have become of our independent and dispassionate judiciary—the crowning jewel of the American system?

When all three branches of government are to be brought immediately under the whim of the people, will not the distinctions between them have been largely wiped out?

And when the goal of the reformers shall have been reached and the so-called representatives of the people shall have become nothing more than their messenger boys, will not representative government actually have been swallowed up by direct government?

Is it not repudiation of representative government to parallel its every branch with an agency for direct government?

Is it not a blunt assertion of the superiority of average over selected intelligence to say that the people themselves can conduct their own affairs better than their representatives can?

And finally:

If ours is a Four-phase Government,

DRAWING A LARGE PART OF ITS STRENGTH FROM THE EQUILIBRIUM BETWEEN THE POWERS OF THE PEOPLE, THE EXECUTIVE, THE LEGISLATURE AND THE JUDICIARY, IS IT NOT TANTAMOUNT TO A REVOLUTION TO CHANGE OVER TO A ONE-PHASE GOVERNMENT IN WHICH COMPLETE POWER IS FOR ALL PRACTICAL PURPOSES LODGED IMMEDIATELY IN THE PEOPLE?

Many specious arguments are advanced to cloak the true significance of the movement for direct government. We are told, for instance, that it is a step beyond the representative system evolutionally.

As a matter of fact, direct government is primitive and its record is one of monumental failures. Even the Mongols, those squat, snout-faced, saddle-legged barbarians, tried it for a time. At the outset they submitted everything to a plebiscite and at first voted enthusiastically over difficult problems of policy—brandishing their six-foot spears as solemnly as we do our almost equally long ballots. As has almost invariably happened, they passed from direct government by the people to absolute government at the hands of one man.

The grim truth is that individual intelligence inevitably proves an overmatch for mass intelligence. The average man must secure the services

of the exceptional man. If he can do it on a representative, constitutional basis, he is that much better off. If he is not fortunate enough to have exceptional brains made available on such easy terms, he hires them for his task of government—in this case paying for the service by entrusting his all (even his life) to the whims of the strong man.

One necessity rests mercilessly on men—there must be government, and the more desperate the situation, the less liable the people are to make a happy bargain with brains.

Another argument is that although the tendency of direct government seems to be fatal, it must be remembered that we in America will not debauch liberty.

They said the same thing in Rome—unwittingly making easy the road for despotism. They said it in France—quickly overriding all checks on the part of the agents of the people, so that before long the Reign of Terror wrote its lurid indictment of direct government. They tried it in Russia—using the "will of the majority" as the screen for the most stupendous debauchery of freedom known to modern times. They said the same thing in this country before the adoption of the Constitution, and then entered upon a period but little removed from anarchy.

The most subtle argument of all, however, is that if the Initiative, Referendum and Recall were hostile to our institutions, they would long since have been declared unconstitutional.

That argument brings us to the very heart of the issue. The states have been permitted by the United States Supreme Court to nullify representative government because the court has held that the question of whether or not a state is maintaining the republican form of government guaranteed in the Constitution is a political one, and for that reason it has refused to pass upon it.

Stated in its simplest form, this attitude of the Supreme Court means that the people themselves and their representatives in Congress (when the issue is as to seating a representative from a direct government state) must assume their part of the burden of upholding the principles of freedom.

Our theory of government places responsibility upon the three operative branches and the people. The Supreme Court insists that the people must not shirk their responsibility in the matter of keeping our institutions inviolable.

In other words, if the people insist upon destroying the equilibrium between themselves and the operative branches, they can do so. The

Supreme Court can deal with violations of the law, but it cannot cope with a wholesale determination to recast the government through the agency of laws and elections. Freedom can triumph over everything but the folly of the free.

If an attempt were made at once to provide for the recall of a President, or a Senator, or for submitting decisions of the United States Supreme Court to final adjudication at a general election, there would be no doubt of the outcome. Every agency of the national government would resist such a revolutionary proposal and the attempt would fail utterly. The issue would then be in the open and drawn on a scale which would compel attention.

For that reason the agents of direct government have worked behind the protection of state rights. They have posed as the most ardent friends of our institutions, simply asking that we have a more boisterously constitutional government by admitting the people to a direct vote in every department. It is, in other words, such a splendid system that it should only be destroyed by its friends!

Every man who stops to think on the question must realize that the attack on constitutional, representative government in the states,

is merely paving the way for a similar attack on our national institutions.

The national government will, unless a halt is called, soon be surrounded and fed politically by states deadened by direct government. In such a case, with men schooled in direct government advanced from authority in the states to the highest national offices, and with the people unaware of the meaning of a change so softly proposed and so gradually brought to pass, it would be possible to completely disregard the Constitution and usher in an era of undisguised mobocracy.

This movement for direct government has been, as we have seen, stimulated by the stalemate between the two parties, which has had the effect of awakening the desire for political freelancing. Since it was futile to shatter lances with either of the parties in their chief strongholds, the adventurers devised a means of finding excitement and getting certain specific results by continuing their party allegiance and conducting raiding-parties into a sphere claimed by neither.

The zone into which these raids are being made is that of constitutional government. We have heard almost nothing of this zone for several decades and have, with hazy optimism, regarded it as somehow safe against all invasion.

The ablest men in both parties have realized that the movement for direct government will, if successful, in time completely undermine our system of constitutional representative government. But in both parties demagogues have been found who prefer to hold an office which has been heavily discounted, rather than not to hold it at all.

Likewise thousands of people in both parties have felt that so long as there is no wholesale repudiation of our system of government, a little tinkering will do no harm. Those who were at first doubtful as to the wisdom of departing from the established form of government, have gradually come to accept the extension of the program for direct rule.

The type of man elected to office under such conditions has strengthened the belief that the people could not do much worse than those whom they had chosen to represent them in a limited way. In many states demagogues who rose to power on the argument that the people can do no wrong, have feared to call a halt on the forces upon which they were borne into office. These demagogues, controlling the party machinery in their states, have deterred both parties from denouncing their methods.

Thus it has happened that the Constitution,

which all office-holders swear to uphold and which both parties praise in general terms, has the uniform and thorough-going backing of no powerful political agency in all of the states.

Since the campaign for direct government is being conducted with a view to capturing the state governments first, and afterwards the national government, the hands-off policy of the great parties as the specific issue is raised in one state after another has the effect of depriving the Constitution of advocates which would otherwise be available in the most vulnerable regions.

If there were no stalemate politically, the movement for direct government would make little or no headway in America. But each party, in the section in which it is most powerfully entrenched, becomes sluggish. The opposition, even with a good program, can never hope for more than temporary success. Unable to win with the weaker party and finding it difficult to capture the dominant party in their particular section, persons pledged to a specific reform, or a number of persons devoted to a number of varying and otherwise hostile reforms, have found a way out.

They have utilized the partial discontent in both parties (which in neither will go to the limit of complete repudiation) by offering a means

of direct government whereby minorities can cooperate on specific measures without in any way quitting their party.

In other words, they have found it easier and more profitable in practical politics to adhere to parties and make raids in the dark. Those raids have actually been upon the Constitution.

Now the Constitution controls no patronage. It does not flatter men. It has even become rather remote from the everyday life of the American citizen.

There has been a vague feeling that it looms like a mighty citadel in the background of the national life, and the impression prevails that in some mysterious way it is impregnable and superbly garrisoned.

Actually, the people are the garrison, and when they quit their posts and go on blind booty raids through the citadel, they are despoiling themselves and placing all of their treasure and their very liberty in jeopardy.

It is because, in this mania for direct government, THE PEOPLE ARE BOTH THE RAIDERS AND THE RAIDED that it is so important for them to open their eyes to actual conditions.

It is bootless now to worry overmuch as to how we came to our present condition of semi-stupor in matters of government. What

we need today is not an apology, but an awakening.

As Washington so well said when the delegates had assembled for the Constitutional Convention: "THE TIME HAS COME TO RAISE A STANDARD!"

We must raise this standard on behalf of representative government in both of the great political parties, if that is possible.

We must raise it in one, if only one will respond.

We must raise it in a third party if that is the only means of rallying the people of the United States to the defense of that which is the bulwark of their liberty and their happiness.

APPENDIX I

The Constitution of The United States

THE CONSTITUTION OF THE UNITED STATES

WE, THE people of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of 25 years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers which shall

be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every 30,000, but each state shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second

year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the executive thereof may make temporary appointment until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of 30 years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for

which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States. If he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If, after such consideration, two-thirds of that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by its adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before

the same shall take effect shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States;

To regulate commerce with foreign nations and among the several states and with the Indian tribes;

To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

To declare war, grant letters of marque and reprisal and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of officers and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings. And—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such importation not exceeding $10 for each person.

The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of Congress, accept of any present, emolument, office or title, of any kind whatever, from any King, Prince or foreign state.

Section 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts of duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of

peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall im-

mediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of 35 years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President and the Congress may by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor

diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Section 1. The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies

between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may, by law, have directed.

Section 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV.

Section 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings

of every other state. And Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the Legislatures of the states concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States under this constitution, as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The Senators and Representatives beforementioned and the members of the several state legislatures and all executive and judicial officers, both of the United States

and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the 17th day of September, in the year of our Lord 1787, and of the Independence of the United States of America, the 12th. In witness whereof we have hereunto subscribed our names.

G. Washington, President and Deputy from Virginia. New Hampshire, John Langdon, Nicholas Gilman. Massachusetts, Nathaniel Gorham, Rufus King. Connecticut, William Samuel Johnson, Roger Sherman. New York, Alexander Hamilton. New Jersey, Wil. Livingston, David Brearley, William Paterson, Jona. Dayton. Pennsylvania, B. Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouv. Morris. Delaware, George Read, Gunning Bedford Jun., John Dickinson, Richard Bassett, Jaco. Broom. Maryland, James McHenry, Dan of St. Thomas Jenifer, Daniel Carroll. Virginia, John Blair, James Madison, Jr. North Carolina, William Blount, Richard Dobbs Spaight, Hu Williamson. South Carolina, J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler. Georgia, William Few, Abraham Baldwin.

Attest: William Jackson, Secretary.

THE NINETEEN AMENDMENTS

FOREWORD

One of the objections to the new constitution in the minds of many people was the absence of a "bill of rights" containing those provisions for the protection of individual liberty and property (e.g., trial by jury, freedom of speech, protection from unreasonable searches and seizures) which had come down from the early charters of English liberties. In deference to this sentiment a series of ten brief amendments were proposed and speedily ratified. Another amendment (No. XI) was soon afterward adopted for the purpose of doing away with the effect of a Supreme Court decision. Thereafter, save for a change in the manner of electing the President and Vice-President, the Constitution was not amended until after the close of the civil war, when amendments XIII, XIV, and XV, having for their primary object the protection of the newly enfranchised negroes, were adopted. The Constitution was not again amended until the last decade, when the income tax amendment, the amendment providing for the election of Senators by popular vote, the prohibition amendment and the woman suffrage amendment were adopted in rapid succession.

It is interesting to note that two of the amendments (No. XI, designed to prevent suits against a state without its permission by citizens of another state, and No. XVI, paving the way for the income tax) were called forth by unpopular decisions of the Supreme Court, and virtually amounted to a recall of those decisions by the people. These instances demonstrate the possibility of a recall of judicial decisions by constitutional methods, and tend to

refute impatient reformers who preach the necessity of a more summary procedure.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in

time of war or public danger; nor shall any person be subject for the same offense to be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing

the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United

States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

ARTICLE XVII.

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years, and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state

in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies. Provided, that the Legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII.

Section 1. After one year from the ratification of this article, the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

ARTICLE XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have the power to enforce this article by appropriate legislation.

APPENDIX II

NATIONAL ORATORICAL CONTEST ON THE CONSTITUTION

THE National Oratorical Contest is a newspaper contribution toward better and more intelligent citizenship. It took the form of a quest for the three secondary school pupils with the highest capacity for interpreting and popularizing American institutions. It was based upon a contest along identical lines carried out in California in the spring of 1923 by the *Los Angeles Times*.

During the scholastic year 1923-24 the contest was conducted upon a nationwide scale, one newspaper in practically every major community sponsoring the project in its own territory and bearing its share of the general expense. It was organized and directed by Randolph Leigh, and will be repeated during the 1924-25 scholastic term. Its scope is indicated in the following statistics:

Contestants	More than 1,000,000
Schools	13,281
Adult co-operators (judges, chairmen, etc.)	53,124

The aggregate audience for all the meetings of the contest, including the gatherings at which the matter was presented to the schools and also the elimination meetings within the schools, is estimated at close to 10,000,000 people. In addition to the major newspapers which financed the undertaking, 842 publications, great and small, gave it publicity.

The orations were on the subject of the Constitution, or the relationship thereto of Washington, Hamilton, Madison, Jefferson, Marshall, Webster or Lincoln. They were limited to 12 minutes, and it was required that they be original.

The eliminations were by classes, schools, groups of schools, newspaper territories and states, until the champions of the seven major sections of the country were selected. These seven sectional champions met in Memorial Continental Hall, Washington, on June 6 to compete for the national championship and the final awards of $3,500, $1,000 and $500. At that meeting President Coolidge made an address, and the contestants were introduced by Hon. R. E. L. Saner, president of the American Bar Association. The judges were Secretary of State Hughes and Supreme Court Justices Sutherland, Sanford, Butler and Van Devanter.

In the course of his address on the scope of the contest and its power for good President Coolidge said: "It represents the most effective method of enlisting the interest of young men and women in our governmental institutions."

The seven finalists were: Vail Barnes (*New York*

World); John M. Dallam, III. (*Philadelphia Bulletin*); Ruth Newburn (*Washington Star*); Jack Turner (*Birmingham Age-Herald*); Eleanor Huber (*Louisville Courier-Journal*); George Chumos (*Kansas City Star*); and Don Tyler (*Los Angeles Times*). The winners were Mr. Tyler, Miss Newburn and Mr. Dallam, in the order named. The winning orations follow:

"THE CONSTITUTION"

By Don Tyler

FRANKLIN HIGH SCHOOL, LOS ANGELES, CALIFORNIA

AS I traveled across the continent to Washington I realized as never before that we are living today in a beautiful land stretching from the snows of the north to the summer lands of the far south, sweeping from the Atlantic to the western waters of the Pacific, a land of peace and freedom.

But we are apt to forget what it is that has given us this great heritage. We have been free so long that freedom is unnoted and hardly prized.

Peace and order have preserved the opportunity for useful and happy lives, have preserved safe and contented homes, freedom of religion, freedom of thought, freedom of speech, independent manhood and womanhood, the right to rule the conduct of ones life so long that we forget whence these blessings come. They come "by a system of government maintained by the resolute loyalty of a great people." If this system of government fails, is destroyed, something else will come. We cannot tell what it will be, but in the words of Elihu Root, this we do know: "It will not be that sys-

tem of government which has preserved our peace, order and security, opportunity and prosperity, this will no longer protect us."

Some of us do not realize that not many years ago men's limbs were beaten and broken and their faces branded with hot irons because they chose to think as individuals, that men were shipped into slavery because they contested the Godliness of a self-styled superior. Against such abuses these immortal words of the Declaration of Independence were written which declare that all men have certain inalienable rights to secure which governments are instituted among men. The Declaration joined issue with all the theories of government since the world began. The theories of all the monarchies and ancient republics were that the state was the main thing, that the king could do no wrong and that the rights of the individual were derived from the state; the Declaration of Independence declared that all men are created equal, the inalienable rights are those of the individual and that the state is organized to secure these ends.

But a thousand noble declarations of principles have been made and passed into the mists of oblivion with no effect. For no mere declaration of principles can be effective unless upheld by certain practical, specific and definite rules to give life to those principles.

So under the loose and meaningless Articles of Confederation the government of thirteen states had failed miserably. There had been unlimited trade, but Congress had not the power to regulate it nor even the

power to supply funds through taxation necessary for its own preservation. The value of the American dollar was one-half a cent. Insurrection and anarchy stalked through the land and everywhere people clamored to return to British rule.

These were the conditions when that intrepid little group of fifty-five men walked into that Philadelphia meeting house in the spring of 1787 to give us this, our Constitution, our government.

They did, indeed, answer the prayer of George Washington in his opening address when he said: "Let us raise a standard to which the wise and honest can repair; the event is in the hand of God."

Never before and I think never since has such a group of men met in this world as that group that framed our Constitution. These men had become familiar with the practical working of free self-government during 150 years of colonial life. They were not theorists, but men of practical life and experience. And yet some of us think of the Constitution as a cold legal document. On the other hand, it is warm and it is living, for these men worked with a knowledge of the character of a material with which government has to deal—that is to say, human nature, with its multitudes of feelings and impulses and passions and weaknesses.

But that is not all. These men did not walk alone on that spring morning into that Philadelphia convention. There walked in with them the thousands upon thousands of shadowy nameless persons who had

through the centuries worked toward liberty and order. There were those struggling figures who through the years of labor and agony and sacrifice had been working out the priceless practical principles of Anglo-Saxon liberty.

And so the fathers of our Constitution embodied in that instrument the spirit of the Magna Charta and the petition of rights and the bill of rights and the habeas corpus act, of all that made the people of England great, and an adaptation of those great principles to American life through the practical working of 150 years of American government.

Then at the end of four months these men after discussing, debating and deliberating, brought forth the most finished, polished and balanced relation between a people and their government that human mind has ever conceived. In the words of William Pitt at the time, "It will be the wonder and admiration of all future generations and the model for all future constitutions."

Our Constitution, the supreme law of the land, gave us a government with its representatives elected at certain fixed intervals, with authority delegated to three departments—the legislative, the executive and the judicial. But the startling fact, for the first time in the history of the world, was that no one department was supreme; that each department served as a check and a balance on the other, and the final supreme power was in the hands of the people. In other words, it provided that those who made the laws could not ad-

minister them and those who administered could not judge them, and gave the supreme power to the governed.

The greatest and noblest purpose of the Constitution, however, is its protection of our individual liberty. It rests on the fundamental principle that liberty is not license, but that it is essentially a matter of self-control, the restraint of the impulse to do to others what we would not have done to us.

To quote Randolph Leigh: "No world power of the present time has a government which reaches back without a break as far as ours. France, Japan, Germany, Russia, Austria, Italy have all experienced tempestuous changes in government since the adoption of our Constitution. France has made the circuit from half-hearted representative government to mobocracy and then to despotism twice. Germany has been swept through many stages from petty despotism and centralized absolutism to the chaos of today. Russia has passed from absolutism to democracy, to sovietism, the most permanent characteristic in that land having been the bread line."

In other words, Europe has little to offer but warnings in the matter of government; as a whole Europe is hardly as far along governmentally as the thirteen states were under the loose Articles of Confederation. And yet friends, at this very moment theorists and experimenters are demanding that we change our form of government. The governmental failures are telling us we are wrong.

I ask you, fellow citizens, shall we listen to them; shall we exchange our freedom of speech for a government where the newspapers can print only what pleases those in power; shall we exchange the sanctity of private property for absolute confiscation by the state; shall we exchange our religious freedom for the bloody massacres of Christians by the Turks?

We Americans possess a mighty sovereignty, but a sovereignty so constitutionally limited that it cannot be used to take from the individual his inherent rights —"a land where every man is a king, yet no man dare to wear a crown." No other country in the world, however, has this protection and no other government since the world began has sought to incorporate it into a practical system of administration.

Our Constitution has brought into being a new sun. It is the sun of individual freedom, and as long as there are Americans, God willing, it shall never sink into the sea of forgotten destinies.

Yet, we must be vigilant and we must be earnest— but we will be, and we will preserve for generations to come and for the peace and blessing of our children and children's children that liberty and order which is our unconquerable Constitution, unconquerable because it is built within the hearts of men.

THE CONSTITUTION OF THE UNITED STATES

By Ruth Newburn

CENTRAL HIGH SCHOOL, WASHINGTON, D. C.

THE original manuscript of the Constitution of the United States is a document which Americans cherish as a priceless treasure. For many years it has been without a permanent home, but at last it has found an appropriate resting-place. It has recently been transferred to the Library of Congress, where it rests within an altar shrine. This manuscript, however, is but the letter, and would be valueless if the spirit of the Constitution were not enshrined within the heart of every true American.

In order to appreciate fully this remarkable document we should be familiar with the condition of the colonies, which made necessary "a more perfect union" and inspired the founders of the Constitution to their great undertaking. Let us turn the pages of history in retrospect to the period when the colonies were struggling for their independence. The war was being carried on at this time by a Continental Congress. Not until 1781 did the colonies pledge themselves to

a "firm league of friendship" called the Articles of Confederation. Under this effort to establish "perpetual union" the states were extremely jealous of each other. That dual patriotism which every American has today for both his state and the nation, was sadly lacking. The Articles of Confederation provided for a legislative department; but not for executive and judicial departments. Congress had the "right to do everything but the power to do nothing." It could not raise money to pay debts; it could not arbitrate boundary disputes, prevent tariff wars between states, nor put down open rebellion. In many ways the weakness of this league was made manifest. Washington wrote to a member of Congress, "Let us have a government by which our lives, liberties and properties will be secure." Leading men were convinced that the creation of a stronger union was the only remedy for the financial and political disorders of the time. Their efforts in this direction resulted in the calling of a convention to revise the Articles of Confederation.

Among the delegates to this convention was to be found nearly all the ripest political experience that this country then contained. Several of these delegates had had the experience of preparing constitutions for the states. They also had the advantage of judging the merits and defects of the state constitutions after they were in operation. Most of them felt that the mere revision of the Articles of Confederation would not bring relief to the country. Accordingly

they boldly undertook the creation of a new code of laws which was to be considered and ratified by the people of the several states.

Elson in his "Side Lights on American History," says that the greatest undertaking of this convention was to organize and consolidate these states into one firm and compact nation, and at the same time to retain the separate state governments in such a way that state laws and national laws would not conflict; this would secure both liberty and union. With the object in view of combining these opposite tendencies of government—liberty and union—and of meeting other specific needs of the colonies, our fathers created a Constitution which, by its adoption, brought forth on this continent a new nation.

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The eminent English statesman Pitt said of our Constitution: "It will be the wonder and admiration of all future generations, and the model of all future constitutions."

The corner stone of this structure is composed of three fundamental ideas.

The first is the representative form of government. Ours is a government which derives its power from the consent of the governed.

The second is the division of governmental powers into three separate departments. They are the legislative, which is a Congress composed of a Senate and a House of Representatives, to make the laws; the ex-

ecutive, consisting of a President, to administer the laws; and the judiciary, consisting of courts and judges, to interpret the laws and apply the principles of justice to the particular cases that arise. The powers of each department are fully outlined and any tendency to overstep them is restrained by an admirably worked-out system of "checks and balances."

The third fundamental idea of the Constitution is the guarantee of personal immunities, with judicial protection of these guarantees. There are certain privileges which liberty-loving people have always held dear, such as freedom of religion, freedom of the press, the right of peaceful assembly, and of trial by jury. In order to secure these, and other privileges, ten amendments, called the "bill of rights," were added to the Constitution.

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These three—the representative form of government, the three-fold division of power and the protection of personal rights—are the fundamental principles of the Constitution.

The great Americans who designed this Constitution had both wisdom and foresight. They proved themselves equal to the magnitude of their task. They created an instrument of government which is "rigid when rigidity is demanded by safety, and flexible when flexibility is necessary." This Constitution is built upon principles of justice that are secure and unchanging, yet it provides within itself for change and growth to meet the needs of an expanding nation.

The American people are adjusting their system of government to the new conditions which have arisen. Care must be taken in this work that no essential element of the Constitution be sacrificed. It must be remembered that in the Constitution the line dividing the authority of the federal government from the authority of the state government is clearly drawn. Our federal government has been likened to the keystone of an arch; the state governments to the supporting stones; each dependent upon the other. Whether or not the federal relations established by the fathers will be maintained depends upon the people. Eternal vigilance will be the price. Our Constitution is something to be "worked, not worshipped." In order to do this intelligently, the people of the United States should be familiar with it in all its essentials. This task is not difficult, for our Constitution is a concise instrument. The constitution of England is contained in hundreds of volumes of statutes and reported cases; our Constitution, including the amendments, can be read aloud in less than half an hour. It is so simplified that the average mind, with reasonable effort, can master its provisions. To make this effort is not only the duty and responsibility, but the privilege of every American.

As American citizens, we should take a lively interest in public affairs. If the individual is ignorant and indifferent, nothing can prevent the government from becoming weak and inefficient. President Coolidge has aptly phrased this idea. "Office," he says, "has great

opportunities for doing wrong, but equal chances for doing right. Unless good citizens hold office, bad citizens will." If the individual is intelligent and alert he will learn something of the character and fitness of the people running for office. He will endeavor to elect men who will serve the people and not their own selfish interests.

At the close of the constitutional convention, while the last members were signing the document, Franklin looked at the chair in which Washington sat, on the back of which was painted a sun. "I have often looked at that picture," he said, "and wondered whether that sun was rising or setting. Now I know that it is a rising sun." During the 137 years that the Constitution has been in operation, the rays of this sun have broadened and strengthened, and the light and influence have spread, not only over our great continental republic, but over all the nations of the world. It is no small thing to be a citizen of the republic whose fundamental law is that great Constitution. It is a great responsibility to be a voter here. The American citizen should know his privileges and his powers as a voter; he should know not only his rights under the Constitution, but also his duties and responsibilities. It has been said that the vote makes the American citizen an "uncrowned king." Let him not fail to exercise this power, that this government "of the people, by the people and for the people shall not perish from the earth."

THE CONSTITUTION

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DURING the period immediately following the Revolution the liberties which the Colonies had wrested from the Crown were in grave danger of perishing from their very excess. The States, nominally a Confederation, were divided into jealous antagonistic factions, menaced by riots, unemployment, stagnant trade, depreciated paper currency and an unpaid and discontented army. Great Britain disregarded her treaty with us entirely, and "The Federalist" well exclaimed in bitter scorn, "We may, indeed, be said, with propriety, to have reached the last stages of national humiliation."

It is conceivable that the presence of a common danger or the iron hand of a dictator might have united the Colonies until the pressure was past or the restraint removed. But that human ingenuity should have produced an instrument of government so complex, so delicately adjusted and yet so fundamentally just, that it banished mutual distrust, brought order

out of chaos, law out of anarchy, and force out of weakness—that is a miracle of Statecraft.

The impotence of the Confederation, the source of all its ills, was the absence of centralized power. But centralized power was dreaded and detested by each of the thirteen States. Each had experienced it, and all had united to fight their way from its tyranny. The strength of the Constitution, and that which made it wholesome and beneficent, was not only that it provided this undisguised and vigorous central authority, but also that it combined two forms of government—the national and the State—so adjusted to each other that each was free to work the benefits to which it was best adapted, but restrained by the other from working injury.

The States by their electors chose an executive for a term of four years, but the citizens of the State chose the electors. Thus he who dreaded centralized power participated in a measure, in bestowing it; and by so participating might, to that extent, see that it was intrusted to one who would not abuse it. The Vice-President could not be an inhabitant of the same State as the Chief Executive; thereby preventing one State from seizing the reins of government and making vassals of the rest.

The legislative function, separated entirely from the executive also embodied both the diffused and centralized authority. Each State had, regardless of its population, two representatives in the Senate; thereby conferring equal power on all States in that body.

But the lower house had the representatives of each State, and, therefore, the votes of each State proportioned to its population.

The judicial function, also independent of the other two consisted of the Supreme Court and such other courts as the Congress might authorize; with jurisdiction over causes arising under the laws of the United States, and under treaties with foreign powers, and extending to suits between citizens and different States. Thus there was guaranteed to the citizen of one State the protection of one centralized authority should he desire to invoke it in litigation in some other State than that of which he was a citizen.

But the balance wheel of the judicial system and indeed of the whole government, was the Supreme Court. Although the President of the United States may call to his aid the Army and the Navy; although the Congress wields immense power through its complete control of the public moneys; although the States maintain armed forces for their protection—yet when the Supreme Court, without the help of visible force or power, with one man—its marshal—carrying its authority, shall lay the Courts command on any of these, that command is implicitly obeyed.

Moreover both nation and State are forbidden to impair the obligation of contracts; to take away life, liberty, or property without due process of law. Thus there are recognized certain fundamental rights and liberties not mentioned in the Constitution but existing in the consciences of men, and no act may be

committed inconsistent with the observance of those rights. And the Supreme Court in its appellate jurisdiction, is the champion of those rights, and those liberties, throwing about each individual the protection of that power of law to which State and Federal governments alike bow.

In this manner then, was the dual government set up. But it was not enough to create and set in motion the remarkable and complex machinery. That which gave it permanence and insured its smooth and supple efficiency was the distribution of sovereign powers between it and the States. The States yielded sole and supreme authority in national affairs. They retained unto themselves all powers not expressly or by necessary implication delegated to the Federal government. "The powers," says "The Federalist," "delegated to the Federal government are few and defined; those to remain in the hands of the State government are numerous and indefinite." In addition to this, each State—guaranteed a republican form of government by the Constitution—had its own executive, legislative and judicial arms; with power to make, execute, and enforce its own laws. Moreover assurance was given that the Federal government would not encroach upon the rights reserved to the States by the frequency of elections, and by the fact that one Congress was unable to impose its will on any subsequent Congress.

This, then, was the relation of the Federal government to the States, but in the relation of the Federal

government to the citizen lay the source of its strength. And to certain basic principles, not apparent to the casual reader of the Constitution, are due its long existence, its undiminished but rather increasing vitality, and the liberty that we enjoy under it today.

Perhaps the most extraordinary of these was the principle that the powers of government were only such as were ceded to it by the governed. What the barons wrung from John at Runnymede, and what the Great Charter proclaimed, was not the yielding by royalty of any of its rights to the people, but the restitution to the people of their inalienable rights. When the Council of Barons was chosen to enforce upon the monarch the observance of the Charter, John cried in helpless fury, "They have given me five and twenty overkings!" The words were strangely prophetic. In the fulness of time the great body of citizens became royalty's overkings; and when our Constitution was formed every power it lodged in the government was a definite grant from the people, not to be enlarged save by their own act. Since also any extension of the power thus granted must be in the same carefully considered manner, with none of the empiricism of quick trials of startling theories from which the framers had so carefully abstained, the amendment of the Constitution was made a matter requiring time and discussion.

The second of these principles was that of representative government rather than direct rule by the people. The framers instinctively dreaded the placing

of power directly into the hands of the people where its use must certainly be very often influnced by prejudice, partisanship, and mob hysteria. They provided for the election of officials into whose hands power should be given during a fixed tenure of office, so that their term in power was not dependent on public will. Thus they hoped to have all government a matter of cool consideration by men who should work out their policies in spite of possible temporary unpopularity. In pursuance of this they armed the majority and minority with power against each other; so that Senators representing a majority of the people, if a minority in the Senate, could not compel impeachments or sanction treaties; and the will of a majority of the people was not even able to amend the Constitution without the assent of three-fourths of the States.

The third consideration was the adaptability of the Constitution. Its framers realized that they could not foresee all the exigencies of time and affairs to come. They enumerated, therefore, rather than defined, the powers assigned to the central government, in order that those powers might be able to meet the needs of future generations whose conditions and wants it happened they could never have guessed.

Thus the Constitution has welded into one nation the thirteen separate, feeble commonwealths which without it must inevitably have perished. It has grown with their growth until it buttresses the liberties of more than 100,000,000 people. And as that strongly centralized power has guided and protected the desti-

nies of the nation it has extended an increasing measure of protection over these personal liberties which the timid feared it must surely destroy. It protects the inalienable rights of the citizen against even the power of the States; and lest somewhere injustice or oppression should be done in its name it gives the assurance that the enumeration in it of certain rights shall not be construed to deny or to disparage those still held by the people.

In this liberty and security which the Constitution bestows upon us we are blessed above all the peoples of the earth. But in the contemplation of what the Constitution is and what it has done let us not forget the solemn truth that it lives not on the printed page, not in judicial decree—but in the hearts of men. That spirit which men call patriotism must sustain the nation in peace as well as in war; and upon that pure and firm foundation the Constitution, if it continue to exist, must for ever rest. May we behold with clearer vision the gulf that separates the liberty that is in obedience from that which is in disobedience: and may we realize that the liberty of obedience is life, while the liberty of disobedience is anarchy and death itself.

And so seeing let us then highly resolve that ours shall be the task of protecting the Constitution from that menace falsely called liberty, which if unchecked, must encompass its destruction.

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